crease of pension to John M. Moon—to the Committee on Invalid Pensions.

By Mr. LAFEAN: Petition of the Pennsylvania State Grange, at Erie, Pa., indorsing bill H. R. 8678—to the Committee on Agriculture.

By Mr. LITTAUER: Papers to accompany bill granting a pension to Bishop L. Aldrich—to the Committee on Invalid Pensions.

By Mr. LLOYD: Petition of 64 citizens of Hamilton, Mo., protesting against a reduction of the tariff on tobacco imported from the Philippine Islands—to the Committee on Insular Affairs.

By Mr. LORIMER: Papers to accompany bill for relief of John Hopper—to the Committee on Invalid Pensions.

By Mr. LOUD: Petition of M. H. Nichols et al., against repeal of the Grout law—to the Committee on Agriculture.

By Mr. McMORRAN: Petition of F. W. Pohly et al., against repeal of the Grout bill—to the Committee on Agriculture.

Also, petition of the Brown City Grain Company, favoring bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

Also, petition of E. C. Ricer & Son and others, favoring bill H. R. 13778—to the Committee on Interstate and Foreign Commerce.

By Mr. MOON of Tennessee: Petition of heirs of Andrew R. Humes, asking reference of their claims to Court of Claims—to the Committee on War Claims.

By Mr. PINCKNEY: Petition of Eleanor L. Deadrick, widow of Thomas S. Deadrick, for increase of pension—to the Committee on Pensions.

By Mr. RICHARDSON of Tennessee: Petition of heirs of John McGill, deceased, of Coffee County, Tenn., asking reference of their claim to the Court of Claims under Bowman Act—to the Committee on War Claims.

Also, paper to accompany bill for the relief of heirs of William Pepper, of Bedford County, Tenn.—to the Committee on War Claims.

Also, petition of Moyas & Consaul, asking that claims of Joseph B. Johnson, of Flora, Tenn.; James Price, of Coffee County, Tenn., and W. J. Winsett, of Glimp, Tenn., be referred to the Court of Claims—to the Committee on War Claims.

Also, papers to accompany bill for the relief of James F. Phillips, of Coffee County, Tenn.—to the Committee on War Claims.

Also, petition of Jacob C. Herndon, of Rutherford County, Tenn., asking reference of his claim to the Court of Claims under the Bowman Act—to the Committee on War Claims.

By Mr. RUPPERT: Petition of Interstate Commerce Law Convention, favoring legislation for the enforcement of the requirements of the existing act—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Receivers and Shippers' Association of Cincinnati, favoring amendment to interstate commerce law increasing the powers of the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

By Mr. RYAN: Petition of Cigar Makers' Union, No. 2, of America, against a reduction of duty on cigars and tobacco from the Philippine Islands—to the Committee on Ways and Means.

Also, petition of the Kellog-Mackay-Cameron Company, favoring the Quarles-Cooper bill—to the Committee on Interstate and Foreign Commerce.

By Mr. SHACKLEFORD: Papers to accompany bill for relief of Wilhelmina Sharp—to the Committee on War Claims.

By Mr. WM. ALDEN SMITH: Petition of Asa Newman et al., of Portland, Mich., favoring enactment of the Hearst bill—to the Committee on Interstate and Foreign Commerce.

By Mr. STEPHENS of Texas: Petition of the Childress Division, No. 574, Brotherhood of Locomotive Engineers, favoring legislation requiring a locomotive engineer to have served three years as fireman on a locomotive—to the Committee on Interstate and Foreign Commerce.

By Mr. SULLIVAN of New York: Petition of the board of directors of the Receivers and Shippers' Association of Cincinnati, Ohio, favoring National Government regulation of freight rates—to the Committee on Interstate and Foreign Commerce.

Also, petition of Annie Woernley et al., against legislation regarding the Sabbath day in the District of Columbia—to the Committee on the District of Columbia.

Also, petition of L. J. Walsworth et al., against legislation respecting the Sabbath day in the District of Columbia—to the Committee on the District of Columbia.

By Mr. SULZER: Petition of the Carriage Builders' National Association, favoring increased powers for the Interstate Commerce Commission—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Merchants' Association of New York, favoring legislation to permit the regulation of towing in New York Harbor—to the Committee on Rivers and Harbors.

Also, petition of the Yale & Towne Manufacturing Company et al., against the Cooper-Quarles bill—to the Committee on Interstate and Foreign Commerce.

Also, petition of the National Trades Association, for favorable consideration of House bill 9302—to the Committee on Ways and Means.

Also, petition of the Alaska Club, of Seattle, asking representation in the lower House of Congress for Alaska—to the Committee on the Territories.

Also, petition of the Grand Camp of the Arctic Brotherhood, asking adequate representation for Alaska in Congress—to the Committee on the Territories.

Also, petition of J. E. Linde Paper Company, favoring the Henry bill relative to third and fourth classes of mail matter—to the Committee on the Post-Office and Post-Roads.

By Mr. THOMAS of Ohio: Petition of the Journeyman Stonecutters' Association, favoring sandstone in the Government building at Cleveland, Ohio—to the Committee on Public Buildings and Grounds.

Also, petition of the Presbyterian and Methodist churches, relating to the Hamilton statehood bill—to the Committee on Alcoholic Liquor Traffic.

By Mr. TRIMBLE: Papers to accompany bill for relief of Samuel McMannus, of Eminence, Henry County, Ky.—to the Committee on Invalid Pensions.

Also, papers to accompany bill for relief of John M. Lawrence, of Eminence, Henry County, Ky.—to the Committee on Invalid Pensions.

By Mr. VAN VOORHIS: Papers to accompany bill for relief of Perry R. Nye, of Zanesville, Ohio—to the Committee on Invalid Pensions.

By Mr. WILEY of Alabama: Petition of citizens of Camden, Ala., favoring ratification of all treaties pending on arbitration—to the Committee on Foreign Affairs.

By Mr. WYNN: Petition of the Pomona Board of Trade, favoring recession of Yosemite Valley and Mariposa big tree grove to the United States Government—to the Committee on Agriculture.

Also, petition of the Los Angeles Chamber of Commerce and other organizations, favoring the Yuma project relative to Colorado River—to the Committee on Irrigation of Arid Lands.

SENATE.

WEDNESDAY, *January 18, 1905.*

Prayer by the Chaplain, Rev. EDWARD E. HALE.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. DOLLIVER, and by unanimous consent, the further reading was dispensed with.

The PRESIDENT pro tempore. Without objection, the Journal will stand approved.

COUNTING OF ELECTORAL VOTE.

The PRESIDENT pro tempore appointed Mr. FORAKER and Mr. GORMAN as tellers on the part of the Senate under the concurrent resolution providing for the appointment of tellers at the counting of the electoral vote for President and Vice-President of the United States.

FINDINGS OF THE COURT OF CLAIMS.

The PRESIDENT pro tempore laid before the Senate a communication from the chief clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of the trustees of the Muhlenberg Evangelical Lutheran Church, of Harrisonburg, Rockingham County, Va., *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

He also laid before the Senate a communication from the chief clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of Samuel F. Ryan *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

ENROLLED BILLS SIGNED.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the President pro tempore:

H. R. 808. An act granting an increase of pension to George Deland;

H. R. 912. An act granting an increase of pension to John F. Dorsey;
H. R. 1099. An act granting an increase of pension to Lewis O. Marshall;
H. R. 1907. An act granting an increase of pension to Wyman J. Crow;
H. R. 1979. An act providing for the extension of the national cemetery on Williamsburg turnpike, near the city of Richmond, Va.;
H. R. 2151. An act granting an increase of pension to Samuel H. Hunt;
H. R. 2353. An act granting an increase of pension to Sophia C. Hilleary;
H. R. 2558. An act granting an increase of pension to John Cummings;
H. R. 3287. An act granting an increase of pension to Orin Plaisted;
H. R. 3359. An act granting an increase of pension to Cyrus E. Salada;
H. R. 3712. An act granting a pension to Frederick W. Tappmeyer;
H. R. 4112. An act granting an increase of pension to Elizabeth Wynne;
H. R. 4211. An act granting an increase of pension to Elijah Roberts;
H. R. 4655. An act granting an increase of pension to Henry Jeffers;
H. R. 4948. An act granting a pension to Wilson H. Davis;
H. R. 5037. An act granting an increase of pension to Richard H. Stillwell;
H. R. 5089. An act granting an increase of pension to Charles W. McKenney;
H. R. 5245. An act granting an increase of pension to William A. Helt;
H. R. 5341. An act granting a pension to Jennie Petteys;
H. R. 5436. An act granting a pension to Hiram Baird;
H. R. 5461. An act granting an increase of pension to Preston D. Roady;
H. R. 5692. An act granting an increase of pension to John Shanley;
H. R. 6129. An act granting an increase of pension to Edwin M. Raymond;
H. R. 6506. An act granting an increase of pension to Edward M. Rhoades;
H. R. 6543. An act granting an increase of pension to Robert Liggatt;
H. R. 6640. An act granting an increase of pension to John A. Courtney;
H. R. 6832. An act granting an increase of pension to Nathaniel Cayes;
H. R. 6857. An act granting an increase of pension to Lorenzo D. Jameson;
H. R. 6948. An act granting an increase of pension to Joshua Parsons;
H. R. 6961. An act granting an increase of pension to Thomas E. Rice;
H. R. 7241. An act granting an increase of pension to Philip H. Strunk;
H. R. 7279. An act for an additional circuit judge in the first judicial circuit;
H. R. 7367. An act granting an increase of pension to John M. Barron;
H. R. 8166. An act granting an increase of pension to Martha A. Johnson;
H. R. 8996. An act granting an increase of pension to Diah Lovejoy;
H. R. 9115. An act granting an increase of pension to Merritt Mead;
H. R. 9771. An act granting an increase of pension to Mary E. Weaver;
H. R. 9798. An act granting an increase of pension to Isaac W. Sherman;
H. R. 10272. An act granting an increase of pension to Lorenzo Streeter;
H. R. 10554. An act granting an increase of pension to John McGregor;
H. R. 10686. An act granting an increase of pension to Michael Kurtz;
H. R. 10945. An act granting a pension to Lola Qualls;
H. R. 10969. An act granting an increase of pension to Joseph H. Shay;
H. R. 11148. An act granting an increase of pension to George W. Stanfield;
H. R. 11178. An act for the relief of Miss Lelia G. Cayce;
H. R. 11235. An act granting a pension to Clarissa E. McCormick;
H. R. 11402. An act granting an increase of pension to Agnes B. Hesler;
H. R. 11451. An act granting an increase of pension to Alexander Morrison;
H. R. 11584. An act for the protection of wild animals and birds in the Wichita Forest Reserve;
H. R. 11788. An act granting an increase of pension to Henry L. Kyler;
H. R. 11984. An act granting an increase of pension to Edward C. Jones;
H. R. 12052. An act granting a pension to Walter P. Mitchell;
H. R. 12058. An act granting an increase of pension to John W. Dickey;
H. R. 12397. An act granting an increase of pension to Alfred Chill;
H. R. 12576. An act granting an increase of pension to William M. Kitts;
H. R. 12577. An act granting an increase of pension to James Graves;
H. R. 12859. An act granting an increase of pension to James Donnelly;
H. R. 13064. An act granting an increase of pension to John K. Tyler;
H. R. 13501. An act granting an increase of pension to James L. Townsend;
H. R. 14150. An act granting an increase of pension to John J. Carberry;
H. R. 14184. An act granting an increase of pension to James Ginnane;
H. R. 14576. An act granting an increase of pension to Evelyn M. Dunn;
H. R. 14601. An act granting an increase of pension to William Scheall;
H. R. 14774. An act granting an increase of pension to Albert S. Graham;
H. R. 14855. An act granting an increase of pension to Henry C. Thayer;
H. R. 14875. An act granting an increase of pension to Seeley Earnest;
H. R. 14879. An act granting an increase of pension to Benjamin Dillingham;
H. R. 14951. An act granting an increase of pension to Benjamin F. Watts;
H. R. 15071. An act granting an increase of pension to Matilda L. Curkendall;
H. R. 15144. An act granting an increase of pension to William J. Reynolds;
H. R. 15207. An act granting an increase of pension to Amos Jones;
H. R. 15269. An act granting a pension to Anna C. Owen;
H. R. 15387. An act granting an increase of pension to William Hall;
H. R. 15404. An act granting an increase of pension to John A. Hayward;
H. R. 15473. An act granting an increase of pension to James W. Capron;
H. R. 15634. An act granting a pension to Harriet A. Orr;
H. R. 15680. An act granting an increase of pension to Isaac Hanson;
H. R. 15743. An act granting an increase of pension to Desire Leglise;
H. R. 15744. An act granting an increase of pension to Edward L. Russell;
H. R. 15779. An act granting an increase of pension to Lucinda M. Reeves;
H. R. 15785. An act granting an increase of pension to Charles E. Young;
H. R. 15791. An act granting a pension to Mary Suppes;
H. R. 16160. An act granting to Farwell, Ozmun, Kirk & Co. license to make excavations and place footings in the soil of certain land belonging to the United States at St. Paul, Minn.;
H. R. 16284. An act to transfer Fayette County from western to southern judicial district of Texas; and
H. R. 16582. An act to authorize the Union Trust and Storage Company to change its corporate name.

PETITIONS AND MEMORIALS.

Mr. GORMAN presented a petition of the Lafayette Square Woman's Christian Temperance Union, of Baltimore, Md., and a petition of the Woman's Christian Temperance Union of Baltimore, Md., praying for the enactment of legislation to prohibit the sale of intoxicating liquors in public buildings, grounds, and

ships; which were referred to the Committee on Public Buildings and Grounds.

He also presented a petition of 38 citizens of Baltimore, Md., praying for the enactment of legislation to prohibit the sale of intoxicating liquors in the Indian Territory when admitted to statehood; which was ordered to lie on the table.

He also presented a petition of sundry citizens of Forest Glen, Thurston, Takoma, Kensington, and Comus, all in the State of Maryland, praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

Mr. DRYDEN presented a petition of the Woman's Christian Temperance Union of Camden, N. J., praying for the adoption of a certain amendment to the suffrage clause in the statehood bill; which was ordered to lie on the table.

He also presented memorials of the Woman's Christian Temperance Union of Camden, of the congregation of the Baptist Church of Hightstown, and of the Woman's Christian Temperance Union of Elwood, all in the State of New Jersey, remonstrating against the repeal of the present anticanteen law; which were referred to the Committee on Military Affairs.

Mr. STONE presented a petition of the Wholesale Saddlery Association of Kansas City, Mo., praying for the enactment of legislation to enlarge the powers of the Interstate Commerce Commission; which was referred to the Committee on Interstate Commerce.

He also presented a petition of the Hamilton-Brown Shoe Company of St. Louis, Mo., praying for the enactment of legislation to reorganize the consular service of the United States; which was referred to the Committee on Foreign Relations.

He also presented petitions of Two Rivers Division, No. 151, Order of Railway Conductors, of Monett; of Local Union No. 513, Brotherhood of Railroad Trainmen, of Monett; of Bridge and Tunnel Division, No. 327, Brotherhood of Locomotive Engineers, of St. Louis; of Local Lodge No. 641, Brotherhood of Locomotive Firemen, of Eldon, and of Easter Lodge, No. 481, Brotherhood of Locomotive Firemen, of St. Louis, all in the State of Missouri, praying for the passage of the so-called "employers' liability bill;" which were referred to the Committee on Interstate Commerce.

Mr. CULLOM presented petitions of the State Legislative Board of the Brotherhood of Railroad Trainmen; of F. W. Arnold Lodge, No. 44, Brotherhood of Locomotive Firemen, of East St. Louis; of Lincoln Division, No. 206, Order of Railway Conductors, of Springfield; of Local Division No. 1, Order of Railway Conductors, of Chicago, and of Northwestern Lodge, No. 424, Brotherhood of Railroad Trainmen, of Chicago, all in the State of Illinois, praying for the passage of the so-called "employers' liability bill;" which were referred to the Committee on Interstate Commerce.

Mr. CLAPP presented a memorial of sundry citizens of Cambridge, Minn., and a memorial of sundry citizens of Grandy, Minn., remonstrating against the enactment of legislation requiring certain places of business in the District of Columbia to be closed on Sunday; which were referred to the Committee on the District of Columbia.

Mr. GALLINGER presented the petition of Mrs. Lelia C. Piper, of Epping, N. H., praying for the adoption of an amendment to the Constitution to prohibit polygamy; which was referred to the Committee on the Judiciary.

He also presented the petition of Frances Fairchild Abbott, of Washington, D. C., praying for the enactment of legislation to change the name of Thirteen-and-a-half street in that city; which was referred to the Committee on the District of Columbia.

He also presented a petition of the congregation of the Methodist Episcopal Church of Rochester, N. H., praying for the enactment of legislation providing for the opening and improving of Massachusetts and Boundary avenues NW., in the city of Washington, D. C.; which was referred to the Committee on the District of Columbia.

He also presented a petition of the Women's Health Protective Association of New York City, praying for the passage of the so-called "pure-food bill;" which was ordered to lie on the table.

He also presented a petition of the congregation of the Calvary Baptist Church of Washington, D. C., and the petition of Bishop Henry Y. Satterlee, of Washington City, praying for the enactment of legislation providing compulsory education in the District of Columbia; which were referred to the Committee on the District of Columbia.

He also presented petitions of sundry citizens of Leonardsville, N. Y., and a petition of sundry citizens of Brookfield, N. Y., praying for the enactment of legislation providing continued prohibition in the Indian Territory according to recent agreements with the Five Civilized Tribes; whch were ordered to lie on the table.

Mr. FRYE presented a petition of the Chamber of Commerce of Boston, Mass., praying for the ratification of international arbitration treaties; which was referred to the Committee on Foreign Relations.

REPORTS OF COMMITTEES.

Mr. CLARK of Wyoming, from the Committee on Railroads, to whom was referred the bill (S. 6361) to authorize the construction of a public railway for the transportation of the mails, troops, and munitions of war of the United States, and to aid in the regulation of interstate commerce, asked to be discharged from its further consideration, and that it be referred to the Committtee on Inerstate Commerce; which was agreed to.

Mr. PERKINS, from the Committee on Appropriations, to whom was referred the bill (H. R. 17094) making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes, reported it with an amendment, and submitted a report thereon.

IRRIGATION AND RECLAMATION WORKS.

Mr. BARD. I am directed by the Committee on Irrigation and Reclamation of Arid Lands, to whom was referred the bill (S. 6312) providing for the construction of irrigation and reclamation works in certain lakes and rivers, to report it favorably without amendment, and I submit a report thereon. I ask for the present consideration of the bill.

The Secretary read the bill, and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration. It authorizes the Secretary of the Interior to construct any irrigation or reclamation works which may be found advisable under the provisions of the reclamation act of June 17, 1902, in and along the shores of the bodies of water hereinafter named, to lower the levels thereof to any extent that may be necessary, and to utilize the same for the storage, distribution, restraining, or pumping of water: Lower or Little Klamath Lake, Tule or Rhett Lake, and Goose Lake, all lying upon the boundary between Oregon and California, and any river or other body of water connected with said lakes.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

DISPOSAL OF LANDS UNDER THE RECLAMATION ACT.

Mr. BARD. I am directed by the Committee on Irrigation and Reclamation of Arid Lands, to whom was referred the bill (S. 6313) providing for the disposal of lands acquired under the provisions of the reclamation act, to report it favorably with amendments, and I submit a report thereon. I ask for the present consideration also of this bill.

The Secretary read the bill.

Mr. CLARK of Wyoming. As the bill will probably lead to debate, I ask that it may go over.

Mr. BERRY. What committee reported the bill?

The PRESIDENT pro tempore. The Committee on Irrigation and Reclamation of Arid Lands.

Mr. BERRY. It was reported this morning?

The PRESIDENT pro tempore. It was just reported.

Mr. BERRY. Let it go over.

The PRESIDENT pro tempore. Objection being made, the bill goes to the Calendar.

PURCHASE AND CONDEMNATION OF IRRIGABLE LANDS.

Mr. FULTON. I am directed by the Committee on Irrigation and Reclamation of Arid Lands, to whom was referred the bill (S. 6406) providing for the purchase and condemnation of irrigable lands in certain cases, to report it favorably without amendment, and I submit a report thereon. I ask for its present consideration.

The Secretary read the bill.

Mr. GORMAN. I ask that it may go over.

The PRESIDENT pro tempore. The bill will go to the Calendar.

Mr. FULTON. Mr. President, perhaps I should explain the nature of the bill, and then I think there will be no objection to its present consideration.

It simply provides that where the Irrigation Bureau finds it necessary, in order to carry out a project of irrigation in a certain district, to condemn or appropriate tracts of land, it is authorized to do so. The payment for the lands which it condemns is to be made from the irrigation fund. It does not require the payment of any money from any fund other than the irrigation fund.

This legislation has been rendered necessary by cases such as

the one I will state. In the State of Oregon an irrigation project under contemplation is being held up by a wagon road land-grant company, the owners of the land-grant company refusing to participate, and by refusing to come in under the conditions of the irrigation law they can stay the whole project, which, if carried out, would be a great benefit for a wide tract of country and a great number of people.

The bill authorizes the Irrigation Bureau to condemn such a tract of land, to pay the cost out of the irrigation fund, and then throw the land open to settlement and sell it and replace the money in the irrigation fund. It is unanimously reported by the committee and recommended by the Department. The Department is very anxious that this law shall be passed, because certain projects can not be proceeded with until such a measure has been enacted.

The PRESIDENT pro tempore. The bill goes to the Calendar.

Mr. FULTON. Is there objection to its consideration?

The PRESIDENT pro tempore. Objection was made by the Senator from Maryland [Mr. GORMAN].

Mr. FULTON. I did not hear it.

BILLS INTRODUCED.

Mr. DRYDEN introduced a bill (S. 6700) granting an increase of pension to William E. Blewett; which was read twice by its title, and referred to the Committee on Pensions.

Mr. TALIAFERRO introduced a bill (S. 6701) granting a pension to Charles B. Spencer; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Pensions.

Mr. OVERMAN introduced a bill (S. 6702) granting an increase of pension to Charles McAllister; which was read twice by its title, and referred to the Committee on Pensions.

Mr. ALGER introduced a bill (S. 6703) granting a pension to John Broad; which was read twice by its title, and referred to the Committee on Pensions.

He also introduced a bill (S. 6704) granting a pension to Mary E. Kilburn; which was read twice by its title, and referred to the Committee on Pensions.

Mr. GALLINGER introduced a bill (S. 6705) authorizing the extension of W street NW.; which was read twice by its title, and referred to the Committee on the District of Columbia.

He also introduced a bill (S. 6706) granting an increase of pension to Jacob Ormerod; which was read twice by its title, and, with the accompanying paper, referred to the Committee on Pensions.

Mr. KEARNS introduced a bill (S. 6707) creating an additional land office in the State of Utah; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Public Lands.

Mr. CLAPP introduced a bill (S. 6708) granting a pension to Isabella McGookin; which was read twice by its title, and referred to the Committee on Pensions.

Mr. ELKINS introduced a bill (S. 6709) to amend an act entitled "An act to regulate commerce," approved February 4, 1887, and to further prevent the payment of commissions or rebates on freight; which was read twice by its title, and rereferred to the Committee on Commerce.

Mr. HALE introduced a bill (S. 6710) granting an increase of pension to Mary Virginia Taylor; which was read twice by its title, and referred to the Committee on Pensions.

Mr. TILLMAN introduced a bill (S. 6711) for the relief of J. E. Davis; which was read twice by its title, and, with the accompanying papers, referred to the Committee on Claims.

AMENDMENTS TO APPROPRIATION BILLS.

Mr. GALLINGER submitted an amendment authorizing the Commissioners of the District of Columbia to credit the assessment for benefits in the matter of the widening of V street NW., under the act approved April 28, 1904, with the sum of $1,050 against certain lots in squares Nos. 139, 140, 141, and 142, in the subdivision of Burleith, etc., intended to be proposed by him to the District of Columbia appropriation bill; which was referred to the Committee on Appropriations, and ordered to be printed.

Mr. ANKENY submitted an amendment proposing to increase the appropriation for the support and civilization of the Dwamish and other allied tribes in Washington from $4,000 to $5,000, intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. GAMBLE submitted an amendment proposing to authorize the issuance of patents in fee to Henry G. White, Annie B. White, and Mary White, members of the Sisseton and Wahpeton band of Sioux Indians, for lands heretofore allotted to them in the State of South Dakota, intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

He also submitted an amendment proposing to appropriate $3,600 to pay $200 each to certain Indians of South Dakota and North Dakota to reward them for services and sacrifice of ponies in accomplishing the rescue of Mrs. Julia Wright, Mrs. Emma Deely, and six children, in November, 1862, intended to be proposed by him to the Indian appropriation bill; which was referred to the Committee on Indian Affairs, and ordered to be printed.

Mr. STEWART submitted an amendment proposing to appropriate $50,000 for surveys in the mining regions of Nevada situated south of the first standard parallel north of Mount Diablo base line, intended to be proposed by him to the sundry civil appropriation bill; which was referred to the Committee on Public Lands, and ordered to be printed.

AMENDMENTS TO STATEHOOD BILL.

Mr. STONE submitted two amendments intended to be proposed by him to the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States; and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States; which were ordered to lie on the table and be printed.

LAURA A. WAGNER.

The PRESIDENT pro tempore. If there is no further morning business the morning business is closed, and the Calendar is before the Senate under Rule VIII.

The bill (S. 2171) for the relief of Laura A. Wagner was announced as first in order on the Calendar, and the Secretary read the bill.

Mr. DANIEL. Mr. President, I rise to a parliamentary inquiry. Is the bill on its passage, or was it just called up?

The PRESIDENT pro tempore. It is on its passage, unless objected to.

Mr. DANIEL. I object to it, Mr. President.

The PRESIDENT pro tempore. Objection is made, and the bill goes over.

Mr. GALLINGER. Before the bill goes over, I wish to call attention to the fact that in the report two amendments are recommended, one striking out $5,000 and substituting $2,000, which are not incorporated in the bill. I call attention to it for the benefit of the Senator who reported the bill.

SUNFLOWER RIVER (MISSISSIPPI) BRIDGE.

Mr. STONE. Mr. President——

Mr. MONEY. Will the Senator from Missouri yield to me for one moment to call up for passage a bridge bill? It will take only about a minute.

Mr. STONE. I yield to the Senator from Mississippi.

Mr. MONEY. I ask leave to call up the bill (H. R. 16992) to authorize the county of Sunflower to construct a bridge across the Sunflower River, Mississippi. It is a House bill authorizing the county of Sunflower to build a bridge across a stream wholly within the State, and therefore within the authority of the State, but the law requires that plans and specifications shall be submitted to the Secretary of War. That has been done and approved.

The Secretary read the bill; and by unanimous consent the Senate, as in Committee of the Whole, proceeded to its consideration.

The bill was reported to the Senate without amendment, ordered to a third reading, read the third time, and passed.

USE OF MONEY IN FEDERAL ELECTIONS.

Mr. STONE. Mr. President, I gave notice yesterday that I would ask leave at this time to call up the resolution submitted by me on the 4th instant.

The PRESIDENT pro tempore. The Chair lays before the Senate the resolution submitted by the Senator from Missouri, which will be read.

The Secretary read the resolution submitted by Mr. STONE on the 4th instant, as follows:

Whereas Thomas W. Lawson, a prominent citizen of Boston, Mass., and a capitalist of reputed large fortune, in a signed article published in Everybody's Magazine, a responsible and widely circulated publication, has specifically charged that he conspired with certain other well-know capitalists to raise a large corruption fund to be used to promote the election of the Republican candidates for President and Vice-President in 1896, and that they did raise $5,000,000 to be expended to "turn at least five of the doubtful States;" and

Whereas during the campaign of 1904 it was directly and emphatically charged by Judge Alton B. Parker, a prominent candidate for the office of President, and by other citizens of great prominence and high

repute, belonging to both the Republican and Democratic parties, as well as by many important and responsible journals, that large sums of money had been contributed by, or extorted from, numerous trusts and corporations, to be used to influence the election then ensuing for President and Vice-President of the United States; and

Whereas the President, in his last annual message, sent to Congress on December 6, 1904, took official cognizance of the growing tendency to corrupt the electorate, and did in direct terms recommend the enactment of a law against bribery and corruption in Federal elections: Now, therefore, be it

Resolved, That the Judiciary Committee of the Senate be, and is hereby, authorized, empowered, and directed to make inquiry into the matters stated in the foregoing preamble, and also, generally, into the subject of the use of money in Federal elections, so as to ascertain as far as possible the extent of the evil, and to report to the Senate at the first session of the Fifty-ninth Congress, by bill or otherwise, the legislation said committee may deem necessary to prevent or suppress bribery and corruption in such elections. Said committee may sit during the vacation of the Senate, and shall have authority to send for persons and papers and to compel the attendance of witnesses.

Mr. STONE. Mr. President, the first preamble to the resolution I have proposed relates to the election of 1896; the second preamble relates to the election of 1904. I will consider them inversely.

On October 31, 1904, just a week preceding the election, Judge Alton B. Parker delivered a notable speech at Madison Square Garden, New York. He denounced the use of a corruption fund, which he declared the Republican organization had raised to debauch the electorate, and denounced also the methods employed to produce it. Among other things he said what I will now ask the Secretary to read.

The PRESIDENT pro tempore. If there is no objection to reading the paper, the Secretary will read it.

The Secretary read as follows:

The spectacle of demanding campaign funds now presented to this country, when rightly regarded, is of a character to shock the moral sense.

We shall do well to pause a moment to ask whither we are drifting in our indifference to right standards and to our old-fashioned sense of propriety in such matters.

Congress creates a new Department of Commerce and Labor. Of that Department the President appoints a Secretary. That Secretary was his private secretary. Within that Department provision is made for the collection from large corporations, including the so-called "trusts," of information which, it is to be borne in mind, is to be submitted to the President for public or private use as he may direct. By grace of the same Executive, this Secretary, through whose Department this information is collected, becomes the chairman of the National Republican Committee. His chief duty it has been and still is to collect funds for the purpose of securing the election of the President. And it is now notorious that there has resulted from this organized importunity—whatever may be the precise way in which it is made effective—an overflowing treasury to the committee, of which boast is openly and continually made. * * *

The whole performance is a shameless exhibition of a willingness to make compromise with decency in order that sums of money may be gathered together sufficiently vast to justify the insolent boast even now that there is no question as to the success which, by such a course, the Republican managers so confidently predict. The performance is entitled only to the credit that it in no sense partakes of hypocrisy. It is as bold as it is improper and indefensible.

Mr. STONE. This charge Judge Parker repeated in subsequent speeches, with additions and amplifications. On one occasion he used language which I quote, and ask the Secretary also to read.

The Secretary read as follows:

When the present campaign opened, the Secretary of Commerce resigned his office, and at the request and as the personal representative of the President became the chairman of the Republican National Committee to bring about, if it might be so, the election of his patron to the Presidency. And lest any should err, it was at the time of his resignation authoritatively announced that at the termination of the campaign he would be summoned again to the Cabinet to fill another Cabinet office. * * * We do not want a Department of Commerce and Labor whose Secretary shall go out from it every four years, after he had filled his brain and his notebook with the secrets of all the great corporations and combinations which depend upon the Government for business or favors, in order not to serve the people, but to raise money to corrupt them.

Mr. STONE. These frightful accusations, Mr. President, were repeated by others and scattered broadcast, but what I have quoted contains the sum of it all and is sufficient. There are two counts in this indictment: First, that a corruption fund was raised by Mr. Cortelyou, and, secondly, that contributions to that fund were, in effect, extorted or induced from trusts and corporations through the force of secret information possessed by Mr. Cortelyou concerning the business affairs of the corporations, which information he had officially obtained as Secretary of Commerce and Labor, and which could be made public and used, or kept secret and suppressed, at the will of the President, then a candidate to succeed himself. That is the charge. Mr. Cortelyou has not answered it. He stands mute, wrapped in grim silence. But Mr. Elihu Root, recently of the President's Cabinet, and the Administration's recognized fidei defensor, has answered it, and the President himself has answered it. From Mr. Root I quote what I send to the Secretary and ask him to read. After quoting what Judge Parker charged, Mr. Root said what I send to the Secretary and ask him to read.

The Secretary read as follows:

Now, if that means anything, it means that the President of the United States made Mr. Cortelyou chairman of the Republican national committee in order that he might use the secrets to the possession of which he had come as Secretary of Commerce to blackmail the corporations. It means that the President and Mr. Cortelyou were engaged together in that vile conspiracy.

* * * * * * *

Now, observe that the charge which Mr. Parker makes can not be supported by mere pretense or the statement of the fact that the managers of corporations have contributed to the Republican fund. Democratic corporation managers have contributed to the Democratic fund and Republicans to the Republican fund. * * *

The mere fact of contributions in no way and to no extent and to no degree whatever sustains this foul and infamous charge.

There must have been some improper motive or means in the contribution—motive for making it or means of getting it.

Mr. STONE. And from the President of the United States I quote what I ask the Secretary to read.

The Secretary read as follows:

Mr. Parker's charges are, in effect, that the President of the United States and Mr. Cortelyou have been in a conspiracy to blackmail corporations, Mr. Cortelyou using his knowledge, gained while he was Secretary of Commerce and Labor, to extort money from the corporations, and I, the President, having appointed him for this especial purpose.

The graveness of these charges lies in the assertion that the corporations have been blackmailed into contributing, and in the implication, which in one or two of Mr. Parker's speeches has taken the form practically of an assertion, that they have been promised certain immunities or favors, or have been assured that they would receive some kind of improper consideration in view of their contributions.

That contributions have been made to the Republican committee, as contributions have been made to the Democratic committee, is not the question at issue. Mr. Parker's assertion is, in effect, that such contributions have been made for improper motives, either in consequence of threats or in consequence of improper promises, direct or indirect, on the part of the recipients. * * *

Mr. Parker's accusations against Mr. Cortelyou and me are monstrous. If true they would brand both of us forever with infamy.

Mr. STONE. Thereupon the President proceeded vehemently to denounce the Parker charges as "wicked falsehoods." To these fulminations Judge Parker made reply. I make a brief extract from his reply, which I will ask the Secretary to read.

The PRESIDENT pro tempore. The Secretary will read as requested.

The Secretary read as follows:

He [the President] is in a position to know what contributions have been made to the Republican national committee by the trusts. If there had been no trust contributions, he could easily have said so. He did not say so. He can not say so. He has waited until the closing hour of the campaign to make easier the pretense of an answer. But it is not an answer. It is a confession, with a plea in avoidance, addressed to a kindly and generous people.

If there had been any doubt of the source of this great campaign fund it is no longer a matter of suspicion, for Mr. Elihu Root, former Secretary of War, frankly admitted last night that trusts and corporations were heavy contributors.

CHARGES ANALYZED.

Mr. STONE. Mr. President, this makes up the substance of this wretched controversy. Does it not present a splendid, inspiring spectacle for the world to gaze at? As you feast your eyes upon it are you not thrilled with pride and with the very ecstasy of patriotism? Let us look closely at it lest we miss some of its excellencies or resultant beatitudes. First, it is charged that a vast Republican campaign fund was raised for corrupt purposes by contributions from the trusts and great corporations, and the President and Mr. Root admit that such contributions were made. What is it they admit? Disguise it as you may, in substance they admit the acceptance of financial aid from corporations which exist in contravention of law for the purpose of establishing industrial monopoly by destroying competition, and which ordinarily expects favors, directly or indirectly, from the Government. From such as these the President of the United States admits contributions were obtained to promote his election. Mr. President, under the circumstances this act of the Republican chairman was an act of gross public immorality, if nothing worse. Could anything be more despicable? To what level have we fallen if the American people can look upon such conduct with complaisance? Aye, and to what level have we fallen if the American Senate can contemplate this national shame with indifference? This confession made by the President and Mr. Root is monstrous. There is no need to decry or condemn it; it speaks for itself.

In the second place, it was charged that Mr. Cortelyou had used secret official information to extort or induce these contributions from the trusts. This charge both the President and Mr. Root denied. Indeed, they denounced it in such florid diction and with such superb frenzy that the very souls of their followers were harrowed up, and no wonder the preceding confession was forgot when partisan feeling was thus wrought upon and so adroitly stirred to fever heat. Whether this ter-

rible indictment is true I neither affirm nor deny; I do not know. I only know that the damning admission stands that the trusts did supply Mr. Cortelyou with campaign funds. Moreover, Mr. Cortelyou has never made answer to this charge. The only answer he has ever vouchsafed, so far as I have seen or heard, is a statement attributed to him to the effect that the collections made by the Republican committee in 1904 were not so large as the collections made by that committee in 1896. If that means anything it is a cry for leniency on the ground of party precedent, and because he had not sinned so grievously as others. Why Mr. Cortelyou stands dumb under this dishonoring arraignment I will not conjecture. That man is said to be wise who knows when and how to hold his tongue. Perhaps the good name of the country would have been better served if the President and Mr. Root had also sought shelter under the same kindly wing of silence. Mr. President, it is hard to believe that Mr. Cortelyou, or that any man of character, would prostitute official opportunities to partisan ends so base. I am loath to believe it; and yet a charge so specific as this, and from a source so high and responsible as this, and which so deeply concerns the public honor and welfare, can not be silenced by contemptuously pooh-poohing and ignoring it. It is a stain upon national honor and it will not be washed out, but will return again and again to plague us, until the charge has been shown to be false, or until it has been avenged if shown to be true.

CORTELYOU'S SELECTION.

Why did the President select Mr. Cortelyou to be chairman of his committee to manage his campaign? Only a little while ago this chairman was a Department clerk under the civil service, and a Democrat. During Mr. Cleveland's last term as President he was assigned for duty as an executive clerk. This assignment was continued under Mr. McKinley, by whom he was afterwards promoted to the post of private secretary, and this position he retained after Mr. Roosevelt became the President. When the Department of Commerce and Labor was created the President named Mr. Cortelyou for Secretary. In this position he was clothed with inquisitorial authority to spy into the secrets of the trusts, and power was also given to make his discoveries public at the discretion of the President. It may be that it was wise to grant this extraordinary inquisitorial power, but also it was a dangerous power to confer upon an executive officer. It is a power easily abused, and the temptation to abuse it was apt to come to a man with Mr. Cortelyou's environments, even though he should have strength to resist it. This man and this official the President himself selected for chairman of the Republican national committee. He was without political experience or familiarity with party management, and his designation for the chairmanship was received with universal surprise. Mr. President, the circumstances of this appointment were curiously significant, if not sinister, and the suspicions inevitably excited by them have provoked a situation greatly to be regretted. Like Banquo's ghost, this question will not down. Why did the President select this inexperienced new convert to be the head of his party organization? Moreover, this accusing fact will not down, that the trusts did fill Mr. Cortelyou's campaign coffers to overflowing. Happily we have the comforting assurance, vouchsafed both by Mr. Root and the President, that the trusts had no improper motive in making these contributions, and that no improper means were used to induce them.

The country is asked to believe, what no doubt a good part of it innocently will and does believe, that the trusts brought their gold to Cortelyou out of purely unselfish and patriotic considerations and that they expect nothing in return. These were virtuous trusts, and theirs an idealistic, self-sacrificing patriotism. Here is a sublime and most affecting exhibition of incorporated altruism. These particular trusts sought only to serve the country and to exalt it. They scorned all base expectation of favors to come, and scouted the very thought that their gold would be used to corrupt. This is what we are expected loyally to believe. Mr. President, are we to accept this theory without questioning? The Senate should know, and the country should know, beyond cavil or doubt, whether a Cabinet officer, holding a secret power over great corporations and placed at the head of a political committee, sought contributions from those corporations; and the Senate and country should know whether enormous sums of money, collected from corporations, were expended to corruptly influence the election. These charges should be investigated, and the Senate should be informed as to the extent and exact nature of this evil.

THE COUNTERCHARGES.

But, thirdly, I turn now to the countercharge made by the President and Mr. Root. They plead what lawyers term an "estoppel." They denied Judge Parker's right to criticise Mr. Cortelyou for taking trust contributions for the reason, as they alleged, that similar contributions were made to the Democratic committee. In other words, they said the Democratic party was as bad as the Republican party.

To this charge Judge Parker replied as follows:

> I requested the Democratic national campaign managers that they should not receive, directly or indirectly, from any trust money for campaign purposes. I notified them that I proposed, if elected, to enter upon the discharge of the duties of that great office unhampered by any obligation to interests or men. * * * And I am advised by them that my request has been scrupulously respected.

That statement, it must be conceded, is straightforward, explicit, and comprehensive. It leaves the President and Mr. Root standing on an empty charge, confronted by complete and sweeping denial, with nothing proved or admitted. The burden of making good is upon the accusers. At present the case against the Democratic committee rests upon a bare assertion made under the stress of party exigency. I doubt if the assertion is well founded. I do not believe it is. Nevertheless, this charge has been made, and the fact that it comes from the President of the United States gives to it potency and makes it a powerful argument in favor of the investigation I have proposed. These charges have been made by Alton B. Parker and Theodore Roosevelt. They are not vague, irresponsible, vulgar campaign rumors; they are definite charges from responsible sources. We can not ignore them. Let the investigation go on. If the Democratic party has also been recreant, as Mr. Root says; if it is also guilty of this monstrous crime against good government, as the President says, let it suffer the consequences. "Hew to the line, let the chips fall where they may."

THE ELECTION OF 1896.

Mr. President, I turn now from the election of 1904 to the election of 1896. During the campaign of 1896 I represented my State on the Democratic national committee, and had the honor to serve as vice-chairman of that body. I had some personal familiarity, therefore, with the circumstances and incidents of that memorable struggle.

Mr. President, many eminent men, well qualified to speak and whose sincerity can not be doubted, have repeatedly expressed the belief that the result of the election of 1896 was brought about by the corrupt use of money, and that belief is shared by thousands. In other words, these people believe the Presidency was bought. This belief may be unfounded, but that it exists is undoubted. And, Mr. President, it can bode no good to have a large proportion of the people believe that Presidential elections are determined by fraud or force. We have all been taught the patriotic lesson of prompt acquiescence in the popular verdict, but if the belief should become deep rooted and widespread that the Presidency is ever in any way made the subject of barter it would shake the foundations of public order. No greater danger could threaten or evil befall American institutions that that of corrupting the electorate, for that is to pollute the very foundation of political power. Therefore it follows that no greater service could be rendered the country than that of guarding it against that danger and that evil.

The election of 1896 was characterized by scenes and events unexampled in our history. Apparently, and I think undoubtedly, there was a popular uprising which, under Mr. Bryan's leadership, promised to sweep all opposition before it. To check this uprising many great financial interests, and interests enjoying unjust or unlawful privileges, and interests dependent on the Government for favors, were effectually organized and knit together in a bond offensive and defensive. It was the most powerful combination of the kind ever organized in America. It was omnipotent, irresistible. I will not provoke acrimony by recounting the numerous expedients to which this combination resorted to accomplish its ends. I will speak of one thing only—the use of money. And even as to that I shall not exploit the stories, however well authenticated, which poured in upon us in 1896. I shall leave all that alone; I shall not testify; I will make no charge of my own. It is enough to speak only of that appalling story with which Thomas W. Lawson has startled the country. His confession is a corroboration, and comes like a climax to a tragedy. The story is brief, but comprehensive; condensed, but complete; it is all-sufficient.

Mr. Lawson is a citizen of Boston. He is reputed to possess great wealth and to be a man of large affairs. I have heard nothing to his disparagement, and, so far as I know, his personal standing is good. True it has been said that he is a stock gambler, and that he delights in sensational performances, and his motives for making his disclosures have been denounced with lurid expletives in great variety. All this, however, is not surprising; it was sure to come; it would be

expected. But stock gambling, so called, is not a crime; it is only the common vocation of capitalists; and as to Mr. Lawson's motives, that is unimportant.

LAWSON'S STORY.

Under the title of "Frenzied Finance" Mr. Lawson printed an article in the current January number of Everybody's Magazine, in which his story is narrated. It is unnecessary to quote this article in extenso. It has been scattered throughout America and Europe, and has been quoted and commented upon in thousands of publications. I presume every Senator has seen it. With blunt frankness the author tells of conferences held with leading financiers and politicians in New York shortly preceding the election of 1896. One gentleman, a high official of the Standard Oil, at one of these conferences declared that "the chances of a McKinley victory looked pretty bad and that the latest canvass of the States showed that unless something radical were done Bryan would surely win." He said that "half a dozen of the biggest financiers in Wall street" had held a consultation, and that "it was decided to turn at least five of the doubtful States." To do this a fund of $5,000,000 was raised and turned over to the Republican national committee. Mr. Lawson tells this story with great circumstantiality, giving names, dates, and places in detail. In naught is he obscure or evasive. He unfolds a scheme planned within a circle around him, and in the execution of which he had a part. It was a scheme for public debauchery, the like of which was never seen before. It was a scheme for wholesale bribery; a conspiracy to buy the electoral vote of States. And this foul treason one of the conspirators justified with this sophistry:

If Bryan is elected—

He said—

there will be such a panic in this country as the world has never seen, and with his money ideas and the crazy-headed radicals he will call to Washington to administer the nation's affairs, business will surely be destroyed and the working people suffer untold misery. * * * It's a case of some of us sacrificing something for the country's good. Bryan's election would set our country back a century, and I believe it's the sacred duty of every honest American to do what he can to save his land from such a calamity.

Mr. President, what think you of that for an example of public duty? What need is there now of a Cincinnatus or a Washington? For unadulterated, patriotic self-sacrifice, ought not the Standard Oil henceforth to supply the American model? Proclaim it in the class room, herald it from the pulpit, that it may be an inspiration forever. The other day I read where General Stoessel, the Russian hero of Port Arthur, had asked the great Japanese commander who conquered him if it were true, as he had heard, that General Nogi had lost two sons in the siege. With deep emotion General Nogi replied that his two boys had been killed, but that he felt compensated for the loss by what they had accomplished. Mr. President, the sacrifice of that grim old warrior was nothing as compared to the sacrifice of the Standard Oil. His was only the sacrifice of blood; the other, the sacrifice of gold. The beauty and pathos of that scene at Port Arthur pales before the greater glory of Wall street rushing to save the country by buying an election.

What particular five States the $5,000,000 were raised to purchase has not been disclosed, except that several hundred thousand dollars of the fund were sent to Delaware. Lawson quotes one of the conspirators as saying to a representative of the Republican national committee that whatever was necessary to carry Delaware should be sent. This conspirator said to the committee's representative: "You had better have the committee ready to put in between $350,000 and $400,000 (in Delaware) if we call for it. I will see that it is kept down as low as possible." And the committee's representative replied "that the committee would do what was decided best." Lawson declares that a large sum was afterwards sent to Delaware in suit cases. This Delaware money concerned a stock deal as well as a political deal, but, if Lawson speaks the truth, it came from the Republican national committee, out of the corruption fund raised on Wall street and turned over to the committee. This part of Lawson's story has been in the main corroborated by Elverton R. Chapman, head of the firm of E. R. Chapman & Co., New York. In a recent statement Mr. Chapman said:

It is the first time I have told this story to anybody except my business partners. I remember well that it was Saturday before the election when I started for Wilmington, Del., with something like $225,000 in suit cases. The money was all currency in small bills, because the bunch down there will not stand for checks or big bills. We reached Wilmington all right, etc.

The remainder of Chapman's story concerns the distribution of the money pursuant to instructions.

Mr. President, this is enough. There is no need to prolong this recital. Here we have a statement, positive and unequivocal that $5,000,000 were raised to be used by the Republican national committee in five doubtful States. A million dollars to the State! For what was it used? For what could it be used? This testimony of Lawson's is not based on hearsay, but on personal knowledge. Is it true? As the case now stands we are compelled to accept it as true. It is impossible to believe that a reputable man would promulgate a story like this if it is false. Men of character do not viciously lie for the mere love of it. I can not see that any advantage could possibly accrue to Lawson by a fabrication of this kind. On the contrary, his statement, whether true or false, was certain to excite hostile criticism and to array powerful influences against him. It is hard to believe that a sane man, to say nothing of his integrity, would deliberately lie without an apparent object to his own detriment. For the sake of those whose good names are involved, for the sake of the public weal, and for the sake of truth itself, this story should be sifted.

The senior Senator from New York has proposed a bill to reduce the Congressional representation of the Southern States for the reason that those States, or some of them, have imposed qualifications upon the right to vote. Why the Senator should confine his reformatory crusade to the South is remarkable, since Northern States have prescribed like qualifications upon the suffrage right. If it can be shown that fraud or force is employed in any Southern State to control elections the evil should be eradicated. However, in the meantime it might advantage the honorable Senator from New York to hold the small end of the telescope to his critical eye. If he is searching for crimes against the suffrage there is no need of a distant view. The conspiracies formed in New York to debauch the electorate are not only a crime against the suffrage, but a crime immediately subversive of representative government, and to its suppression the Senator from New York might profitably devote his solicitous attention. He might put his own house in order before inspecting the domicile of his neighbor. To the suppression of this crime we should all consecrate ourselves without division. Partisan considerations should not restrain or influence us. The extent of the evil should be known and drastic remedies should be applied.

PRESIDENT'S RECOMMENDATIONS.

Finally, Mr. President, I call attention to the third preamble to the pending resolution. This preamble relates to a passage in the President's last message, of date December 6, 1904. In that message the President used this language, which I will request the Secretary to read.

The Secretary read as follows:

The power of the Government to protect the integrity of the election of its own officials is inherent and has been recognized and affirmed by repeated declarations of the Supreme Court. There is no enemy of free government more dangerous and none so insidious as the corruption of the electorate. No one defends or excuses corruption, and it would seem to follow that none would oppose vigorous measures to eradicate it. I recommend the enactment of a law directed against bribery and corruption in Federal elections. The details of such a law may be safely left to the wise discretion of the Congress, but it should go as far as under the Constitution it is possible to go, and should include severe penalties against him who gives or receives a bribe intended to influence his act or opinion as an elector; and provisions for the publication not only of the expenditures for nominations and elections of all candidates, but also of all contributions received and expenditures made by political committees.

Mr. STONE. What the President here asserts is true and what he counsels is wise. While applauding what he says, I confess to some surprise at his frank deliverance. Under the circumstances I am not surprised that the President should be impressed with the prevalence, perhaps even with the enormity, of the crime he denounces; but I am surprised that he should, so soon after the election, denounce this particular crime in language so explicit and defiant. If Judge Parker spoke truly, then the President himself is the conscious beneficiary of the very crime he condemns. That Judge Parker spoke truly, in part at least, the President admitted; whether he spoke truly throughout is a question. The President's intrepidity puzzles me to determine whether he was in fact advised, and to what extent advised, as to the immoral means employed to promote his election. I would prefer to believe that the President was ignorant of many things done for his profiting. Theodore Roosevelt is instinctively an honest man. But he is also inordinately ambitious, and I have thought that ambition had so blurred his native honesty as to blind him momentarily and to make him do things, or suffer things to be done, that would otherwise have been repulsive. And may not this in fact be the true conception? May it not be, now that his battle is won and his intrenchment in power sure, that the President looks abhorrent upon the orgies out of which his triumph grew, and that he has resolved to expiate the offense by making its repetition impossible?

True it has been irreverently suggested that this loud alarum

from the White House was only a stroke of smart practical politics intended to checkmate a threatened move on the same line by a distinguished Democratic Representative from New York. But, although it will be generally admitted, and by none more readily than by that disconsolate band of recalcitrant Republican leaders whom the President has coerced into submission, that he is an adroit and most accomplished politician, I repudiate the suggestion that the President has been instigated by partisan considerations to uplift this banner of reform. I prefer to believe the best of him, and, all things considered, the best I can believe is that the President, being an honest man, smarting under the sting of remorse, and being himself no longer interested in campaign contributions, has resolved unselfishly to exert his strength to promote the public welfare in this behalf. However, it profits nothing to question the President's motives for championing this reform. Whatever his motive, his strenuous leadership should be accepted and his powerful advocacy applauded. I am willing to follow his lead in this particular. I am willing to proceed on the lines he has indicated. But first let us have the whole subject investigated by a committee of trained lawyers, so that we may proceed informedly and intelligently. Will Republican Senators follow the President's lead in this matter? Have they any reason for holding back? With any of them will prudence prove the better part of valor?

I hope Senators will vie with each other in running this accursed treason down. Guard the Republic against this crime which strikes at the root of national life. Corruption is like a worm in the bud. If not plucked forth it will destroy the flower of liberty. Let us make our elections a true expression of the free, intelligent, unbought will of the American people. Let us give to the maxim "Vox populi, vox Dei" a vital meaning in American public life.

Mr. President, that is all I care to say now. I ask that the resolution lie upon the table.

Mr. HANSBROUGH. Mr. President, I do not assume to speak for the President of the United States on a matter of this kind, or any matter, so far as that is concerned, but I think, in view of what the Senator from Missouri has said, and in view of the fact that he has quoted only partially from the reply of President Roosevelt to the charges made by Judge Parker, that the reply of the President should be read at the desk at this time. I ask unanimous consent that it may be read.

The PRESIDING OFFICER (Mr. NELSON in the chair). It will be read if no objection is made. The Chair hears none. The Secretary will read as requested.

The Secretary read as follows:

WHITE HOUSE,
Washington, D. C., Friday.

Certain slanderous accusations as to Mr. Cortelyou and myself have been repeated time and again by Judge Parker, the candidate of his party for the office of President.

He neither has produced nor can produce any proof of their truth, yet he has not withdrawn them; and as his position gives them wide currency I speak now lest the silence of self-respect be misunderstood.

Mr. Parker's charges are, in effect, that the President of the United States and Mr. Cortelyou, formerly Mr. Cleveland's executive clerk, then Mr. McKinley's and my secretary, then Secretary of Commerce and Labor, and now chairman of the Republican national committee, have been in a conspiracy to blackmail corporations, Mr. Cortelyou using his knowledge gained while he was Secretary of the Department of Commerce and Labor to extort money from the corporations, and I, the President, having appointed him for this especial purpose.

The graveness of these charges lies in the assertion that the corporations have been blackmailed into contributing and in the implication which, in one or two of Mr. Parker's speeches, has taken the form practically of an assertion that they have been promised certain immunities or favors or have been assured that they would receive some kind of improper consideration in view of their contributions.

That contributions have been made to the Republican committee, as contributions have been made to the Democratic committee, is not the question at issue. Mr. Parker's assertion is in effect that such contributions have been made for improper motives, either in consequence of threats or in consequence of improper promises, direct or indirect, on the part of the recipients. Mr. Parker knows best whether this is true of the contributions to his campaign fund which have come to his trusted friends and advisers who represent the great corporate interests that stand behind him.

But there is not one particle of truth in the statement as regards anything that has gone on in the management of the Republican campaign. Mr. Parker's accusations against Mr. Cortelyou and me are monstrous. If true they would brand both of us forever with infamy; and, inasmuch as they are false, heavy must be the condemnation of the man making them. I chose Mr. Cortelyou as chairman of the national committee after having failed successively to persuade Mr. Elihu Root, Mr. W. Murray Crane, and Mr. Cornelius M. Bliss to accept the position. I chose him with extreme reluctance, because I could ill spare him from the Cabinet. But I felt that he possessed the high integrity which I demanded in the man who was to manage my campaign.

I am content that Mr. Parker and I should be judged by the public on the characters of the two men whom we chose to manage our campaigns; he by the character of his nominee, Mr. Thomas Taggart, and I by the character of Mr. Cortelyou. The assertion that Mr. Cortelyou had a knowledge gained while in any official position whereby he was enabled to secure and did secure any contributions from any corporation is a falsehood.

The assertion that there has been any blackmail, direct or indirect, by Mr. Cortelyou or by me is a falsehood. The assertion that there has been made in my behalf and by my authority by Mr. Cortelyou or by anyone else any pledge or promise, or that there has been any understanding as to future immunities or benefits in recognition of any contribution from any source, is a wicked falsehood.

That Mr. Parker should desire to avoid the discussion of principles I can well understand; for it is but the bare truth to say that he has not attacked us on any matter of principle or upon any action of the Government save after first misstating that principle or that action.

But I can not understand how any honorable man, a candidate for the highest office in the gift of the people, can take refuge merely in personalities, but in such base and unworthy personalities.

If I deemed it necessary to support my flat denial by any evidence I would ask all men of common sense to ponder well what has been done in this campaign by Mr. Cortelyou, and to compare it with what Mr. Parker himself did when he was managing Mr. Hill's campaign for governor, and to compare what has been done as regards the great corporations and moneyed interests under this Administration with what was done under the last Democratic Administration, when Mr. Olney was Attorney-General. I would ask all honest men whether they seriously deem it possible that the course this Administration has taken in every matter from the Northern Securities suit to the settlement of the anthracite coal strike, is compatible with any theory of public behavior save the theory of doing exact justice to all men without fear and without favoritism. I would ask all honest and fair-minded men to remember that the agents through whom I have worked are Mr. Knox and Mr. Moody, in the Department of Justice; Mr. Cortelyou, in the Department of Commerce and Labor, and Mr. Garfield, in the Bureau of Corporations, and that no such act of infamy as Mr. Parker charges could have been done without all those men being parties to it.

The statements made by Mr. Parker are unqualifiedly and atrociously false.

As Mr. Cortelyou has said to me more than once during this campaign, if elected I shall go into the Presidency unhampered by any pledge, promise, or understanding of any kind, sort, or description save my promise made openly to the American people, that so far as in my power lies I shall see to it that every man has a square deal, no less and no more.

THEODORE ROOSEVELT.

The PRESIDENT pro tempore. The resolution will go to the Table Calendar if the Senator from Missouri desires no other disposition made of it.

Mr. STONE. I ask that it may lie on the table.

The PRESIDENT pro tempore. It will go to the Table Calendar. The Secretary will report the first case on the Calendar.

RESERVE MILITIA.

The bill (S. 5094) to promote the efficiency of the reserve militia and to encourage rifle practice among the members thereof was announced as the first bill in order on the Calendar.

Mr. HALE. Let the bill go over. It is a very great, enormous scheme, involving millions of dollars. I object to the bill, and ask that it go to the Calendar under Rule IX. I do not want to leave it in a situation where it can come up any day, and, in the absence of Senators who are opposed to it, pass by unanimous consent. Therefore, I make such an objection as will carry it to the Calendar under Rule IX.

The PRESIDENT pro tempore. The bill will go to the Calendar under Rule IX.

PENSION ORDER OF INTERIOR DEPARTMENT.

Senate resolution No. 152, submitted by Mr. CARMACK, instructing the Committee on the Judiciary to inquire and report whether there is authority of law for a recent order of the Secretary of the Interior that all persons who served in the Army or Navy during the war of the rebellion, etc., who have reached the age of 62 shall be presumed to have incurred such disabilities as to entitle them to receive pensions under act of June 27, 1890, was announced as the next business in order on the Calendar.

Mr. PLATT of Connecticut. I think the resolution may as well go over under Rule IX.

Mr. BATE. Mr. President, I ask that the resolution may be laid over until the return of the Senator from Tennessee [Mr. CARMACK], who introduced it. He is not here, but will be in a day or two.

The PRESIDENT pro tempore. The Senator from Connecticut objects, and asks that it go to the Calendar under Rule IX. It is so ordered.

ABANDONED PROPERTY IN INSURRECTIONARY DISTRICTS.

The bill (S. 599) to revive and amend an act to provide for the collection of abandoned property and the prevention of frauds in insurrectionary districts within the United States, and acts amendatory thereof, was announced as the next business in order.

Mr. HALE. This is a very important bill, and it will lead to large debate. It ought to go to the Calendar under Rule IX.

The PRESIDENT pro tempore. The Senator from Maine objects, and asks that the bill go to the Calendar under Rule IX. That order is made.

LODE CLAIMS IN ALASKA.

The bill (S. 5183) to modify the law pertaining to the acquisition and holding of lode claims in the district of Alaska was considered as in Committee of the Whole.

The bill was reported from the Committee on Mines and Mining with amendments.

The first amendment of the Committee on Mines and Mining was, in section 1, page 1, line 6, after the word "made," to insert "at the point of discovery;" so as to make the section read:

That within ninety days after the location of any lode claim in the district of Alaska, and before notice of such location is filed for record, a shaft at least 10 feet deep shall be sunk on a lode in said claim, or an open excavation shall be made at the point of discovery not less than 10 feet long and exposing such lode at least 10 feet in depth. An affidavit, sworn to by the owner, or some one on his behalf, who has knowledge of the matter, stating the nature and extent of the work, and upon what part of the claim, and by whom it is performed, shall be filed with the location notice.

The amendment was agreed to.

The next amendment was, in section 2, page 2, line 3, after the word "than," to strike out "twenty days'" and insert "two hundred hours';" and in line 5, after the word "shall," to strike out "before the 1st of January each year" and insert "within three months after the performance of the annual labor;" so as to make the section read:

SEC. 2. That the work required by law to be performed upon each lode claim each calendar year shall in no part of Alaska represent less than two hundred hours' labor. That the owner of any lode claim heretofore or hereafter located in the district of Alaska shall, within three months after the performance of the annual labor, file for record with the recorder in the recording district where the claim is situated an affidavit, subscribed and sworn to by himself, or some one on his behalf, who has knowledge of the facts, stating the value of such work, the nature and character of the work, on what part of the claim it has been performed, the name or names of the persons who performed it, together with the dates upon which each performed the work.

Mr. HOPKINS. I should like to ask if any members of the committee having the bill in charge are present. It is a bill of a good deal of importance.

The PRESIDENT pro tempore. The bill was reported by the Senator from Idaho [Mr. HEYBURN] from the Committee on Mines and Mining.

Mr. HOPKINS. I suggest that the bill be laid aside temporarily until the Senator from Idaho comes in.

Mr. HALE. Will the Senator withhold that suggestion for a moment——

Mr. HOPKINS. Certainly.

Mr. HALE. And let the Secretary read that part of the bill referring to prosecutions for perjury where no oath had been administered. That seems to be an innovation, so far as I know.

The Secretary read as follows:

SEC. 5. That any person who shall swear to or sign any affidavit required by this act knowing such affidavit to be false in whole or in part, or without knowing the statements therein contained to be true, shall be guilty of perjury, and shall, upon conviction thereof, be punished by imprisonment in the penitentiary for a term of not more than five years. It shall be no defense to a prosecution for perjury under this section that an oath was not administered, or that it was taken in an irregular manner, or that the affidavit does not comply with all the requirements of this act.

Mr. HALE. It is a very remarkable innovation in a criminal law applied to a prosecution for perjury to declare that it can be sustained although no oath has been administered. I think the bill had better go over at any rate.

Mr. HOPKINS. There is another point to which I desire to call the Senator's attention. If there is an honest mistake on the question of boundary the bill makes it perjury, the same as though it were willfully and knowingly done.

The PRESIDENT pro tempore. The bill will go over on objection, retaining its place.

GREAT FALLS AND OLD DOMINION RAILROAD.

The bill (S. 2833) to authorize the extension, construction, and operation of the Great Falls and Old Dominion Railroad into the District of Columbia was announced as next in order.

Mr. MARTIN. Just let that bill go over without prejudice. Of course I do not expect to ask that it be taken up now, as only fifteen minutes remain before the unfinished business would displace it.

The PRESIDENT pro tempore. The Senator from Virginia asks that the bill may go over without prejudice.

Mr. HALE. Let it go to the Calendar under Rule IX. Of course it will have to be debated, as it was before.

Mr. MARTIN. I have no objection to that course; it makes no difference which Calendar it goes to. It will have to be taken up by motion, I know, whenever it is taken up.

The PRESIDENT pro tempore. The bill will go to the Calendar under Rule IX.

PENSIONS TO SURVIVORS OF INDIAN WARS.

The bill (S. 3642) to extend the provisions, limitations, and benefits of the act of July 27, 1892, as amended by the act of June 27, 1902, was announced as next in order on the Calendar.

Mr. PLATT of Connecticut. I think the bill may as well go over under Rule IX.

The PRESIDENT pro tempore. Objection being made, the bill goes to the Calendar under Rule IX.

RESTORATION OF AMERICAN CITIZENSHIP.

The bill (S. 4438) to restore American citizenship to any woman whose citizenship has been lost or suspended by marriage with a foreigner was announced as next in order.

Mr. PLATT of Connecticut. That bill was up the other morning, and its further consideration objected to. I think the Senator who objected to it is not in his seat, and I ask that it may go over without prejudice.

The PRESIDENT pro tempore. The bill will go over without prejudice.

ACCEPTANCE OF DECORATIONS.

The bill (S. 4947) granting permission to George W. Hill, Henry E. Alford, G. B. Brackett, William A. Taylor, H. W. Wiley, M. A. Carleton, and John I. Shulte, all of the Department of Agriculture, to accept decorations tendered them by the Government of France, was announced as next in order.

Mr. PLATT of Connecticut. That bill and the next, the bill (S. 5269) to authorize Mr. Herbert W. Bowen, minister of the United States to Venezuela, to accept a gift conferred upon him by the Shah of Persia, and some other bills on the Calendar, authorize our ministers and persons in the employ of the Government to accept decorations. I think they all ought to go over. Let this bill and the next go over.

The PRESIDENT pro tempore. Objection is made, and the bill goes over. The next bill, being the bill (S. 5269) to authorize Mr. Herbert W. Bowen, minister of the United States to Venezuela, to accept a gift conferred upon him by the Shah of Persia, will go over.

OWNERS OF PRIVATE DIES.

The bill (S. 1387) to refund internal-revenue taxes paid by owners of private dies was announced as next in order.

Mr. PLATT of Connecticut. That claim has been put on the omnibus claims bill. It is not by any means sure that the omnibus claims bill will pass, and, therefore, perhaps the bill had better remain on the Calendar under Rule IX until that is determined.

The PRESIDENT pro tempore. The bill goes to the Calendar under Rule IX.

CHARLES L. PERKINS.

The bill (S. 4276) for the relief of the estate of Charles L. Perkins was announced as next in order.

The Secretary read the bill.

Mr. PLATT of Connecticut. Let the report be read.

Mr. ALLISON. Let the bill go over for the present, Mr. President.

The PRESIDENT pro tempore. Objection being made, the bill goes over—retaining its place?

Mr. ALLISON. Yes.

The PRESIDENT pro tempore. Retaining its place.

JURISDICTION OF COURT OF CLAIMS.

The bill (S. 4409) to extend the jurisdiction of the Court of Claims was announced as next in order.

Mr. ALLISON. Let the bill go over without prejudice.

The PRESIDENT pro tempore. It will go over without prejudice.

SOUTHERN JUDICIAL DISTRICT OF WASHINGTON.

The bill (S. 2521) to detach certain counties from the United States judicial district of Washington and to create a new judicial district, to be called the southern district of Washington, was announced as next in order.

Mr. PLATT of Connecticut. I desire to offer an amendment to that bill, but it has not been prepared at this time. Bills of this nature, I will say, have hitherto failed to provide for the trial of offenses committed within that portion of the district which is put into a new judicial district, and that has created some considerable annoyance and led to a failure of justice. I should want to add such an amendment to this bill if it is to pass. Therefore I ask that it may go over, keeping its place.

The PRESIDENT pro tempore. The bill will go over without prejudice.

FOREST RESERVATIONS.

The bill (S. 4429) relating to the creation of forest reservations on the public domain, and for other purposes, was announced as next in order.

The Secretary read the bill.

Mr. SPOONER. I think it would be well enough to lay the

bill aside until the Senator who reported it comes in. I ask that it may go over without prejudice.

The PRESIDENT pro tempore. The bill goes over without prejudice.

MILITARY TELEGRAPH OPERATORS.

The bill (S. 982) amending the act of January 26, 1897, entitled "An act for the relief of telegraph operators who served in the war of the rebellion," was announced as next in order.

Mr. ALLISON. Let the bill go over without prejudice.

The PRESIDENT pro tempore. It will go over without prejudice.

JOHN M. HILL.

The bill (S. 4277) for he relief of John M. Hill was considered as in Committee of the Whole.

The bill was reported from the Committee on Public Lands with an amendment, in lines 7 and 8, to strike out "$1,248.50" and insert "$750;" so as to make the bill read:

Be it enacted, etc., That the Secretary of the Treasury be, and he is hereby, directed to pay to John M. Hill, late register of the United States land office at Walla Walla, Wash., out of any money in the Treasury not otherwise appropriated, the sum of $750, the amount paid by him out of his own funds for clerk hire during his term of office as such register prior to the appointment of a clerk in said office from an eligible list furnished by the Civil Service Commission of the United States.

The amendment was agreed to.

The bill was reported to the Senate as amended, and the amendment was concurred in.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

COLVILLE RESERVATION, WASH.

The bill (S. 5187) to provide for the opening of the remaining portion of the Colville Reservation, in the State of Washington, was announced as next in order.

Mr. ANKENY. The Senator from Michigan [Mr. BURROWS] objected to the bill when it was up before, and I ask that it may go over without losing its place until he may appear.

The PRESIDENT pro tempore. The bill goes over without prejudice.

INFORMATION AND DISPLAY BUREAU FOR IMMIGRANTS.

The bill (S. 4118) authorizing the Commissioner-General of Immigration, under the direction of the Secretary of Commerce and Labor, to establish in connection with the immigrant station at Ellis Island an information and display bureau for the purpose of aiding in the distribution of immigrants, and for other purposes, was announced as next in order.

The PRESIDENT pro tempore. The bill has been heretofore read and considered as in Committee of the Whole.

Mr. PLATT of Connecticut. Let it be read again.

The Secretary proceeded to read the bill.

The PRESIDENT pro tempore. The Secretary will suspend the reading. The hour of 2 o'clock having arrived——

Mr. HALE. Let the bill go to the Calendar under Rule IX.

The PRESIDENT pro tempore. Objection being made, the bill goes to the Calendar under Rule IX. The Chair lays before the Senate the unfinished business, which is House bill 14749.

STATEHOOD BILL.

The Senate, as in Committee of the Whole, resumed the consideration of the bill (H. R. 14749) to enable the people of Oklahoma and of the Indian Territory to form a constitution and State government and be admitted into the Union on an equal footing with the original States, and to enable the people of New Mexico and of Arizona to form a constitution and State government and be admitted into the Union on an equal footing with the original States.

Mr. BERRY. I desire to offer an amendment to the bill, and if it is not in order to offer it now I wish to give notice of it and have it printed. Let it be read.

The PRESIDENT pro tempore. The amendment will be read, there being no objection.

The SECRETARY. In line 11, page 22, after the words "United States," insert:

That the consent of the United States is hereby given for the State of Arkansas to extend her western boundary line so as to include all that strip of land in the Indian Territory lying and being situate between the corporate limits of the city of Fort Smith and the Arkansas and Poteau rivers, and extending up the Poteau River to the mouth of Mill Creek: *Provided*, That nothing in this act shall be construed to impair any right now pertaining to any Indian tribe or tribes in said part of said Indian Territory under the laws, agreements, or treaties of the United States, or to affect the authority of the Government of the United States to make any regulations or to make any law respecting said Indians or their lands which it would have been competent to make or enact if this act had not been passed.

The PRESIDENT pro tempore. The amendment will lie on the table and be printed.

Mr. BERRY. Mr. President, I desire to say just a word in regard to that amendment. Of course I understand that the amendment is not now before the Senate.

There is at Fort Smith, Ark., east of the Poteau River and south of the Arkansas River, a small strip of land which belongs to the Choctaw Nation. It constitutes a part of the city of Fort Smith, and by consent of the Choctaws and Chickasaws the Fort Smith city government has been exercising police powers over it for some time. This is a proposition for the Government to consent that Arkansas may attach that strip of land to her territory. There are about 15 acres of it, I think. There are some 12 blocks; they are irregular blocks, and I do not know the amount of land in each block, but there are in the neighborhood of 15 acres. It is now a part of the city of Fort Smith, and called Western Fort Smith. The Poteau River lies between that strip of land and the nation, and it ought to be under the jurisdiction of Arkansas and the city of Fort Smith.

Mr. SPOONER. This is one of the instances where the Senator from Arkansas is in favor of expansion.

Mr. BERRY. I am not in favor of expansion so far as the Choctaw Nation is concerned, but I want to expand Arkansas to the extent of this reservation. That is all there is in it.

Mr. NELSON. I understand the amendment is not now offered for action, but simply submitted.

The PRESIDENT pro tempore. The amendment lies on the table.

Mr. NELSON. It lies on the table.

Mr. CLAY. Mr. President, the pending bill proposes to combine the two Territories, Oklahoma and the Indian Territory, and to make one State of the same, and to unite the two Territories, Arizona and New Mexico, thus forming one State to be called "Arizona." I will not interpose any objection to the union of the former, but desire to discuss and present the objections I entertain against the admission of the latter two Territories as one State. I believe that under the platforms of the two great political parties we are bound to admit each of the four Territories as separate and distinct States. I will not undertake to present the platforms of the two great political parties as set forth in national conventions heretofore, for this has already been done during the progress of the debate time and again. I wish to urge the many objections which I consider serious in their nature against the union of New Mexico and Arizona as one State. We have owned these two Territories for more than fifty years. Arizona was formerly a part of New Mexico. President Buchanan recommended a division along the mountain range so as to form two Territories.

The purpose of such recommendation was clearly to give to the people then residing in New Mexico and the county of Arizona local self-government so that they could transact the business necessary to carry on their local affairs without traveling from seven hundred to a thousand miles to the capital of New Mexico. He sought to give them a more economic form of government, where the capital of the Territory would be within easy reach of the people of Arizona, and to enable them to administer their affairs at the least possible cost. A bill was introduced in Congress in 1861 by the Delegate from New Mexico providing for a temporary government for Arizona and dividing the Territory of New Mexico as nearly as practicable into halves, drawing a line directly north and south through New Mexico and following the Continental Divide, shedding the waters to the east, on the New Mexico side, to the Atlantic Ocean, and those on the Arizona side to the Pacific Ocean. A critical examination of this bill will show that it provided that temporary government should be maintained and continued in Arizona until such time as the people residing therein shall, with the consent of Congress, form a State government. This bill became a law, and from that time to the present period Arizona has been a Territory, with a Territorial government, seeking admission into the Union as a State. From that period to the present time New Mexico and Arizona have been separate and distinct Territories. The debate preceding the passage of this bill separating the two Territories will be found to be interesting and sets forth clearly and forcibly the reason why the division was made.

The principal reason urged for the passage of this bill was on account of the great inconvenience necessarily caused to those residing in Arizona by traveling to Santa Fe, the capitol of New Mexico, more than 700 miles. It was insisted in the debate that the Territory of New Mexico ought to be divided, that it was large enough for four States, and that it was the established policy of this Government to form compact States for the convenience of the people residing in such Territory. Senator Wade called special attention to the fact that the Territory of New Mexico, including Arizona, was altogether

too expensive and too inconvenient to the people to transact public business. He also called attention to the fact that New Mexico and Arizona constitute a country larger than half of Europe, and that the seat of justice in New Mexico, where the people must go to transact public business, was more than 700 miles from the principal place of business of Arizona.

The very identical question which we are to-day discussing was then maturely considered by Congress, and both branches of Congress reached the conclusion that New Mexico was too large for one State, that in the interest of economic government, and to satisfy the needs and convenience of the people, the division was made. It was contemplated that these two Territories should remain separate and distinct until qualified for statehood, and when so qualified should be admitted as separate and independent States. The act of Congress specially provides that Arizona shall enjoy a Territorial government until such time as the people residing therein should form a State government. Congress may have the legal and constitutional right to unite the two and to deny to each separate statehood, but I doubt if we have the moral right to do so. Such legislation violates the spirit of the act separating these two Territories.

This bill, now before the Senate, proposes to undo the former action of Congress and to blend them together, against their will and over their protest, and to impose upon the people of Arizona all of the inconveniences the act separating them was intended to obviate. Clearly, to my mind, such legislation breaks the faith the law separating them bore to these people. The Committee on Territories do not contend that the people of New Mexico and Arizona desire to become united and come into the Union as one State.

I wish to call the attention of the Senator in charge of the bill—the Senator from Minnesota [Mr. NELSON]—to the fact that we have not been furnished in the Senate with any evidence taken before that committee showing that any considerable per cent of the people of either Arizona or New Mexico desire this union.

Mr. BATE. If the Senator will pardon me, I wish in this connection to state that we wanted to get the bill back to the committee, so as to get the testimony that he is now calling for, but it was denied us. No testimony was taken before the Senate committee, and hence we have to rely upon testimony taken in the House.

Mr. CLAY. Strange to say, Mr. President, the Committee on Territories had this bill before them for a long while, and the Committee on Territories report a bill proposing to unite four Territories into two States and admit them as two States into this Union, and the Senate has not been furnished with any evidence to show the wishes and desires of the people of either Territory. There is no report from the Committee on Territories showing that the people desire this union.

It does strike me, Mr. President, that when we attempt to unite these two Territories into one State we ought to have some evidence from the Committee on Territories showing that the people residing in Arizona, or some per cent of those people, at least, desire this legislation. I stand here in my place and say that the Committee on Territories has not furnished to the Senate any proof from a single witness residing in either New Mexico or Arizona to show that the population of those two Territories desire this union. The Committee on Territories has not furnished any proof or any report to the Senate to guide us in ascertaining the wishes of those people in regard to this unnatural union. I do not believe a single member of that committee can furnish to the Senate proof that there is any sentiment in New Mexico or Arizona desiring such union.

I pause, Mr. President, and say now I do not believe it can be shown that 5 per cent of the people of Arizona and New Mexico desire this union. I believe that if separate statehood was granted to these people that unanimously they would prefer it to the union, provided they could get separate statehood.

The Delegate nominated by the Republican party to represent New Mexico in the next Congress accepted the nomination and set forth as a part of his platform the early admission of New Mexico as a separate and distinct State. I quote as follows from his platform.

Now, mark you, the Delegate who has been elected to represent New Mexico in the next Congress was elected on a platform favoring separate statehood for New Mexico, and he pledged himself to act in accordance with that platform.

Mr. President, let us see what the Republican convention which had met to nominate a Delegate to represent New Mexico in the next Congress said:

> Statehood is the most important question before the people of New Mexico at this time. Our loyalty to the General Government, our great progress in natural wealth, our system of magnificent schools, our code of civil and criminal laws, our freedom from mob law, our respect for the courts, the extent of our great Territory, and the intelligence of our people entitle us to an equal status among the States of this Union under its present name and boundaries.

I want to call the attention of the Senator in charge of this bill to the fact that that plaform demanded the admission of New Mexico in its present name and with its present boundaries. Mr. Andrews, who defeated Mr. RODEY, a most excellent representative from that Territory, who, as we are told now, is in favor of single statehood, said, when he accepted the nomination for Delegate in the Fifty-ninth Congress:

> If elected, I will have introduced and will work earnestly for the passage by Congress of a bill granting statehood to New Mexico—

How?—

> under its present name and within its present boundaries and donating to the Territory a liberal amount of public land and money for its public schools, institutions, and other public purposes.

I lay down the proposition, Mr. President, and I will prove it, that every Delegate elected during the last twelve years to represent New Mexico in Congress has been elected on a platform in favor of statehood for New Mexico with her present boundaries and and her present name.

Mr. BATE. Before the Senator passes from that point, I should like to ask from which one of these platforms he is reading?

Mr. CLAY. I am reading from the Republican platform.

Mr. BATE. I know; but of what year?

Mr. CLAY. I am reading from the Republican platform of last year, the platform of the Republican convention which elected the Delegate who is to take his seat when the next Congress meets.

Mr. BATE. Is the Senator reading from the platform on which that Delegate was nominated?

Mr. CLAY. Yes; the platform which was adopted at the time he was nominated and when he accepted that nomination.

Mr. BATE. Not the national platform?

Mr. CLAY. No; not the national platform.

Mr. President, to show the unanimity of the people of New Mexico in favor of single statehood, I desire to call attention to the fact that both political parties, in nominating Delegates to represent that Territory in Congress, have declared with unanimity in favor of statehood for New Mexico. If you will examine into what has occurred in Arizona you will find the same thing to be true there. The Republican party and the Democratic party in that Territory have both declared in favor of single statehood. I lay down the proposition that during the last twelve years all conventions, both Republican and Democratic, held in Arizona and in New Mexico have declared with unanimity in favor of single statehood.

Mr. President, it may be true that the people of New Mexico may be driven to union with Arizona because we decline to give them statehood in any other way, but such action on our part, in my opinion, is not in keeping with the spirit of our American institutions. We ought at least to pay some attention to the wishes and desires of the people to be affected by this legislation.

Mr. SIMMONS. Mr. President, I should like to inquire of the Senator from Georgia if, in his opinion, there is any sentiment worthy of mention, even in New Mexico, in favor of joint statehood, except as a choice between joint statehood and a continuance in their present Territorial condition?

Mr. CLAY. I will say to the Senator that the information I have is that the people of New Mexico and Arizona are unanimous in favor of separate statehood. Probably a majority of the people of New Mexico would prefer union statehood of the two Territories rather than to be denied statehood altogether, and Mr. RODEY, in his statement here, only contends for statehood for the two Territories as one State for the reason that he sees no hope of getting single statehood in accordance with the wishes and desires of the people residing in those Territories. I do not believe the committee has furnished to this Senate any evidence that there is any widespread desire amongst the population residing in either Territory for a union of the two Territories into one State.

The present Delegate from Arizona and the Delegate elected to succeed him are zealously opposing the union of these two Territories, and they tell us that the population of Arizona are unanimous against the admission of the two Territories as one State. They know the wishes and desires of their constituents, and we ought to listen to their arguments and heed their counsel. What evidence has a majority of the Committee on Territories presented to the Senate to show that there is any sentiment in Arizona or New Mexico in favor of this union? They

may accept it, because they are extremely anxious to enjoy the advantages of statehood. But no one will deny that the population of both Territories prefer with unanimity separate statehood for each Territory.

Mr. SIMMONS. Mr. President, with the permission of the Senator from Georgia——

The PRESIDENT pro tempore. Does the Senator from Georgia yield to the Senator from North Carolina?

Mr. CLAY. With pleasure.

Mr. SIMMONS. I do not know whether the Senator's attention has been called to a paper, placed, I believe, upon the desk of almost every Senator, which contains an article entitled "New Mexico Stands Pat for Joint Statehood." An examination of the article shows exactly what the Senator is stating, that, while it is claimed on behalf of New Mexico that its people are unanimous for statehood, they are only in favor of it, as the Senator has stated, as a choice between two evils when failing to get separate statehood. If the Senator will permit me, I should like to read an extract from the article.

The PRESIDENT pro tempore. Does the Senator from Georgia yield to the Senator from North Carolina?

Mr. CLAY. I have no objection to yielding to the Senator to have him read the article.

Mr. SIMMONS. With the Senator's permission, I will now read an extract from that article, which shows the truth of his statement and of my statement. It is as follows:

> An overwhelming majority would like to have single statehood, but failing of that, would be willing to accept and would vote for joint statehood with Arizona.
>
> There are a large number who favor joint statehood alone and who would be against single statehood.

But the overwhelming majority, according to this article which has been placed upon our desks as an argument, I take it, in favor of joint statehood, are in favor of joint statehood only as a choice between evils.

Mr. CLAY. I have not heard that proposition denied by any member of the committee.

Under our popular institutions, in dealing with such grave problems we certainly should consult the wishes and conveniences of those so deeply and vitally interested. Whatever we do can not be undone. This bill proposes the formation of two States out of four Territories—legislation of the greatest importance—and the Senate thus far has not been furnished with the slightest evidence giving the desires of the population of the Territories in regard to the pending measure. I oppose the blending of these two Territories into one State because nature has separated them by a great natural barrier. The mountain range, known as the Continental Divide, rising from 5,000 to 10,000 feet in height, with practical crossings at only a few places, separates these two Territories. The present Delegate from Arizona tells us that this natural barrier would render it extremely burdensome for most of the people of Arizona to pass from their homes to the capital of the new State, should it be established as now outlined. I oppose the blending of the two States because a large per cent of the people of New Mexico are Mexicans, while the population of Arizona, with the exception of the Indians, is almost entirely American. The population of New Mexico and Arizona have different habits and customs, and such union would undoubtedly create friction in the event they are united against their will. Statistics show that New Mexico is a Catholic country and Arizona a Protestant country; and the information furnished me leads me to believe that the two are not likely to come together in brotherly love.

Experience and observation have taught me that racial differences and antagonisms are hard to overcome. We might say they ought not to exist, that separate and distinct races ought to exercise more charity and forbearance. This may be true, but it becomes the duty of those who legislate for the good of the country to look great truths in the face, and to deal with men, their passions and prejudices, as we find them. If we can avoid race antagonisms we ought to do so. We should not attempt to unite in one State separate and distinct races, with different habits and customs, entertaining hostile feelings and incapable of living together in peace. Each Territory, when joined together in statehood, would be jealous of the other, always striving to control and shape the legislation of the new State. The laws made to meet the demands of the people of New Mexico might not give satisfaction to the people of Arizona. I predict, if this bill shall become a law, that a legislative war will begin when these two Territories meet in convention to form a constitution, and will never end, resulting in a bitter and continuous feud between the population of the two Territories. In my judgment it is far better to let them remain Territories than to attempt to unite them against the wishes of the people of the two Territories. No one having authority to represent either the people of Arizona or New Mexico contends that this union would be satisfactory to those directly interested in this legislation. Mr. RODEY, the Delegate from New Mexico, is reluctantly supporting this bill because he fears, unless he accepts statehood for the two Territories, that legislation providing for statehood in any form whatever will be defeated. I have read with some interest the argument he made in favor of this union, and this argument thoroughly convinces me that he would rejoice to see separate statehood for each Territory.

Mr. BATE. I would ask the Senator if he does not know, speaking of the present Delegate from that Territory, that at the last session his position was just the reverse of what it is at present; that he has changed his position, and is now willing to accept joint statehood, because, as he stated in his speech, he fears they will have to take that or nothing. He has formerly advocated the other proposition.

Mr. CLAY. I am glad to do him justice, and I would not be willing, under any circumstances, to do him an injustice. It is true that at the last session of this Congress Mr. RODEY zealously advocated single statehood; it is also true that now he is in favor of single statehood, and that he simply accepts this measure for joint statehood because he can not get what his people want. That is the only reason for his doing so.

He accepts this bill solely for the reason that he is convinced that he must do so or nothing will be done by this Congress to gratify the people of the Territory he represents. He knows that the population of the Territory, which he so well represents, has sought for nearly fifty years to become a member of the Union, and, while seventeen different bills have passed the House granting statehood to New Mexico, still their fondest hopes have been crushed, either in the Senate or conference committee. He says himself that he has seen every bill that has been before Congress for statehood where more than one State was involved go down in defeat. This situation his people have faced for a half century. I read with sorrow his speech favoring the measure. I could see clearly between the lines that it was with humiliation and sorrow that he accepted the terms unjustly demanded by a majority of the Committee on Territories. Mark you, he proclaims that this bill is not an unmixed evil. It gives statehood, which his people so much desire, but in such a way as to wound the pride and destroy the history of New Mexico. This Territory has a remarkable history, which records the struggles and triumphs of her people for more than a half century, but after the passage of this bill this ancient and honorable Territory will no longer exist in name and character, but will be merged with Arizona, and her people will be deprived of the honorable name they have so long enjoyed. I am not surprised that they should receive this legislation with shame and humiliation; I am not surprised that they are ambitious to become a member of the Union, clothed with all the rights and powers of statehood, that they may make for themselves and their posterity a name and character in the sisterhood of States that would redound to the honor and glory of this Republic.

It is wrong, wickedly and cruelly wrong, to deprive New Mexico of the name which she has so long enjoyed, and which she is entitled to enjoy as a member of this Union. Mr. RODEY, in answer to a question asked him by Mr. WILSON, the Delegate from Arizona, which was to the effect: "Was it not true that these two Territories were large enough for two States, and ought, in fact, to be two States?" replied, in substance: "Yes; but we in New Mexico have made up our minds that a half loaf is better than no bread." Shame that the American Congress should deprive these Territories of a whole loaf when they are justly entitled to it. Shame that the American Congress should force these Territories to accept single statehood by declining to give them anything unless they do so, when in justice they are entitled to and desire to be admitted into the Union as separate and independent States. The people of these Territories have waited long and patiently for separate statehood, and Mr. RODEY himself only accepts this measure because the prospect of separate statehood is so remote that he fears Congress will not grant it. I am glad to say that those of us on this side of the Chamber are ready to redeem our party pledges and do justice to the population of these two Territories. Mr. RODEY said: "I reluctantly acquiesce in the inevitable, and on behalf of the long-neglected, good Christian people of the great Territory of New Mexico, whom I have the honor of representing as a voteless Delegate, advocate the passage of this measure." Why does he advocate it? Why does he accept it? Why does he acquiesce in the decision of the majority of the Committee on Territories? Why is he willing to merge New Mexico into Arizona? Why is he

willing for the name of New Mexico to be dropped from the history of his country? Why is he willing to see her deprived of the honor and glory connected with independent statehood? I will tell you why. Because the majority of the Committee on Territories has denied to his people the right and privilege which legally and morally belongs to them. It is absurd to presume that the support which he gives this bill is any evidence whatever that the people of those two Territories desire this union.

I do not believe that any Senator on the Committee on Territories will say for a minute that the people of either Territory desire this union. I do not believe—and I challenge them to produce the evidence—that 10 per cent or 5 per cent or 2 per cent of the population of either Territory are in favor of this union, provided they can get single statehood. You can not produce the evidence.

Well does Mr. RODEY say that the people of these Territories have battled for a half century, until now, failing to secure all they were expecting, they accept the only measure of self-government which the powers that be in this nation seem willing to accord them. I believe this bill ought to be amended, striking out every section relating to the union of New Mexico and Arizona and inserting the legislation necessary to give statehood to both New Mexico and Arizona. I have offered such an amendment. This amendment is the identical bill that passed the House almost unanimously at the last session of Congress and was defeated in the Senate by continuous debate. I do not believe that any Senator will deny that had we reached a vote on this bill before the adjournment of Congress this measure would have received the approval of a majority of the Senate and would have given statehood to each of these Territories.

The identical bill passed the House practically without opposition and had a fair majority in the Senate during the last session of Congress, and there has been no change in the membership of either the House or the Senate.

It is not necessary to refer to the methods adopted to defeat this legislation, neither do I desire to criticise those who saw proper, in the discharge of their official duties, to defeat the measure. I simply desire to call attention to the fact that this amendment, which I now offer at that time met the approval of a majority of both Houses of Congress. In passing upon this important question, Mr. President, we should resort to argument, and not abuse; we should appeal to reason, and not to passion and prejudice; we should consider the welfare of the population of these Territories and the interests of the American people. We should critically examine the resources of each Territory and the character of the population residing therein and ascertain the capacity of the people to carry on State government. We should see if they are likely to be able to bear the burdens of taxation and to carry on all the functions of State government. We should ask the question, What is likely to be the future of these States in wealth and population in comparison with sister States? These are imporant inquiries, but how often in legislating we neglect important inquiries and are governed by passion and prejudice.

I shall now address myself, Mr. President, to these inquiries, and I do so believing that I am right, believing that these two Territories ought to come in as one State—that they are entitled to do so legally and morally.

Arizona has less population than New Mexico. This Territory embraces an area of 113,929 square miles, 42,000,000 acres of grazing land and 10,000,000 acres of agricultural land. The timber belt alone contains nearly 10,000 square miles. The last census shows 1,840 patented mines now in operation in Arizona. The output from these mines annually, in round numbers amounts to $43,000,000. Tell me a Territory like this is not capable of discharging the duties of statehood!

The mining interest in this Territory is still in its infancy. The testimony furnished me points to the fact that in Arizona there are nearly 30,000,000 acres of mineral lands. It is true that agriculture is maintained there almost entirely by irrigation, but we have every reason to believe that irrigation will be a success. I have read with interest the report of the minority of the House committee. This report shows 152,000 acres of land in cultivation in Salt River Valley, producing annually hay valued at $1,200,000; fruits valued at $80,000; stock fattened and sold from pastures valued at $1,500,000; honey valued at $80,000; butter and cheese, $76,000; poultry and eggs, $50,000; total, $2,906,000—nearly $20 per acre.

It is absurd to talk about Arizona not having sufficient resources to meet the expenses incident to statehood, to be able to put in operation a magnificent system of schools, to erect her public buildings, and to pay her taxes. The American Union in the future will be proud of Arizona as a State.

Irrigation, it is true, is expensive, but the soil is deep and has wonderful productive power. When irrigated the soil yields an annual return per acre as follows: Almonds, $75 to $150; canteloupes, from $75 to $100 net; alfalfa, from $36 to $56 per acre net, and so forth, clearly showing the productive power of the soil to be wonderfully great. The census shows three great lumber plants located in Arizona, cutting daily 200,000 feet of first-class lumber. I am informed by a gentleman who is perfectly reliable that the census was taken last year by the Territory to ascertain the population, and that the Territory at that time contained a population of 178,600, and has probably now reached 200,000. If that be true, under every rule of construction Arizona is entitled to single statehood, and she would be entitled to a Representative in Congress under any rule we have ever laid down. This population, leaving out the Indians, is almost entirely American. In the face of these facts who will dare say that these people are not entitled to enjoy the blessings of statehood? Who will dare say that they are not able to meet the expenses and discharge the obligations of a sovereign State? We can say even more of the resources of New Mexico. Compare the census of 1890 with 1900, and see what rapid strides these people have made in a period of ten years. Number of farms in 1890 4,458; in 1900, 11,834. We find that in 1890 787,882 acres were in cultivation, and in 1900 5,130,178 acres. The value of farm lands in 1890 amounted to $8,140,800; in 1900, $20,888,824.

Take the value of farm implements—and that is the highest evidence of the thrift of a people. Go into a county or a State where you find the farmers using improved machinery; it means progress; it is the highest evidence of thrift that they are keeping up with the progress of the age. The value of farm implements in 1890 was $291,240, and in 1900 $1,151,610. The value of farm products in 1890 was $2,000,000 and had increased in 1900 to $10,000,000. In the year 1900 New Mexico had 326,873 acres of land under irrigation. In considering the resources of a State or Territory we should not undervalue the mineral productions or mineral lands. Coal and iron have made Pennsylvania rich and powerful, and have been the sources of great wealth in West Virginia and Alabama. In 1903 New Mexico produced gold, $384,685; silver, $148,659; copper, $860,733; lead, $94,936. The area of her coal lands amounted to one-half million acres. She produced from June 30, 1900, to June 30, 1903, 3,710,000 tons of coal, valued at $5,011,281.70. I am informed that thirty coal mines are now in operation in New Mexico. This Territory now owns 1,123,000 cattle, 5,674,000 sheep, 113,000 head of goats, and 97,500 head of hogs. Its wool crop in 1902 amounted to 22,000,000 pounds. In the past three fiscal years 553 companies have filed incorporation papers, with a capitalization of $309,711,966. Give New Mexico the right to statehood, and with a good State government capital from all over this country will go there and develop that Territory and make it a great American State.

The House committee tells us that the Territory maintains fifteen Territorial institutions; that the value of her hospitals, orphan asylum, and public school property amounts to more than $3,000,000.

To state these facts and figures answers every argument made by the enemies of separate statehood charging that the population and resources of these Territories can not meet the demands of two separate and distinct States. I am informed that the population of New Mexico will now exceed 300,000 people. New Mexico contains 122,580 square miles of territory. Combine these two Territories into one State and this new State will be larger than any State in the Union except Texas. It will not do to cite Texas as a precedent for the union of these two Territories. Conditions are entirely different. The joint resolution for annexing Texas to the United States had in view the great inconvenience likely to follow by the creation of a State containing such vast area and made provision for the creation of new States out of territory within the boundary of Texas. The resolution annexing Texas provides that new States of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. The people of Texas, with the consent of Texas, not with the consent of Congress, can divide the State into five States, to be represented by ten Senators on the floor of this Senate; they can do this without any further legislation by Congress. I predict that the time will come when the people of Texas will divide and form four additional States, represented by ten votes in the higher branch of Congress.

Texas came into the Union by treaty; we recognized the fact that she contained 269,000 square miles; we recognized the fact that she had then only a population of 150,000, but Congress clearly saw that the time might come, and that the

time would likely come, when Texas would desire to be divided into five States, and Texas was given the authority to do so without any action of Congress, and that provision was a wise one, in my opinion.

I do not know whether my friends from Texas agree with me in the prediction I have made, but Congress certainly has provided that in an emergency, if the people are dissatisfied with the present arrangement, on account of any inconvenience, they may divide themselves into five States and come into the Union. There is no such provision in the bill now before us, providing for the union of New Mexico and Arizona. If they come in as one State, regardless of inconvenience, wealth, or population, the fate of the people, so far as statehood is concerned, is forever settled.

Why was it that Congress divided the Territory of Dakota into South and North Dakota? When the bill was first introduced in 1887 by Senator Manderson, of Nebraska, it was intended to create out of the whole Territory of Dakota a State, but it was amended, changing the boundaries so as to create two States. This was done for the reason that the whole of the Territory was entirely too large for a single State. I have been handed extracts from the CONGRESSIONAL RECORD giving in substance the arguments made in favor of division. The basis of the argument was that Dakota was entirely too large for a single State.

I have never found any argument in favor of division except that Dakota was too large for one State. The debate lasted for days. The bill was pending in Congress for weeks and months, and the ablest men who have ever represented States in this Union stood here and pleaded in favor of division, and they never gave any other reason than that the Territory was too large for one State.

It was stated during the debate that the Territory of Dakota contained 149,100 square miles, so that as one State it would embrace, in round numbers, 27,000 square miles more than the United Kingdom of England, Ireland, Scotland, and Wales. Those in favor of division contended that Dakota was as large as New York, Pennsylvania, New Jersey, Maryland, and Virginia. These arguments were so strong and convincing that the division was made, and as a result of such division we now have two States formed out of the Territory of Dakota—North and South Dakota.

What are we proposing to do now? To unite Arizona and New Mexico as one State, which will give nearly 100,000 square miles more in the new State than were contained in all Dakota. Join these two Territories together and you have, in round numbers, 241,000 square miles in area. South Dakota has 77,000 square miles and North Dakota, 72,100 square miles, while the new State to be created out of New Mexico and Arizona will contain an area of 241,000 square miles. We divided Dakota because the Territory was too large for one State, and we are uniting Arizona and New Mexico because they are not large enough for two States.

Well have the friends of double statehood asked the question, When has the principle changed that it is wrong to cut up large Territories into small States, or that it is right to unite large ones into still larger ones?

Well has it been said that it was contrary to the policy of this nation, so long established, in almost every instance to cut up large Territories into small States that they might be administered more conveniently and more economically.

The reason for division in the present instance is much stronger than it was in the division of Dakota. The population possessed the same habits, were living under the same form of government, and had no conflicting interests. The population of Arizona and New Mexico are different in nationality and have different customs, habits, and laws, and many antagonisms are sure to arise by this unnatural union. A comparison of these two propositions ought to defeat the pending measure. Why should Congress make any distinction between these two Territories seeking statehood and other Territories heretofore admitted to statehood? Why should we lay down a different and more drastic rule for Arizona and New Mexico than has been applied since the organization of our Government? The ordinance of 1787, providing for the admission of new States into the Union, set forth that when any State shall have 60,000 free inhabitants therein such State shall be admitted, by its Delegates, into the Congress of the United States on an equal footing with the original States in all respects whatsoever, and shall be at liberty to form a permanent constitution and State government. Congress was empowered to admit a Territory with less population and frequently did so, but when a Territory acquired a population of 60,000 inhabitants this fact alone entitled such Territory to statehood.

This number of inhabitants gave the undoubted right to admission, and Congress had the discretion to admit them earlier. I know of no other act of Congress prescribing the qualification for statehood. All of the territory acquired by Congress heretofore, with the exception of Alaska, Philippine Islands, and Porto Rico, was intended to be organized into States. The treaties whereby we acquired the Louisiana Purchase, the Floridas, and the treaty with Mexico, whereby we acquired the Pacific slope, the identical territory we are considering, expressly provided that the inhabitants thereof shall be incorporated into the Union of the United States, and admitted as soon as possible according to the principles of the Federal Constitution.

Mr. BATE. I will ask the Senator from what he reads.

Mr. CLAY. I stated the substance of the treaties.

Mr. BATE. Does the Senator refer to the Gadsden treaty or the Guadalupe-Hidalgo treaty?

Mr. CLAY. The latter.

No one will deny that this Government has contracted with the powers from which we obtained ceded territory that the people residing in such territory should be admitted into the American Union at the earliest practicable day, and should enjoy all the rights, privileges, and immunities of American citizens. Our fathers never thought of acquiring territory, either by treaty or conquest, for any other purpose except to be organized into States and to be clothed with all the rights and powers enjoyed by the original thirteen States. We have kept in good faith those sacred promises, with the exception of New Mexico and Arizona, and there is no sound reason why we should not extend to them the blessings which we have heretofore extended to all of the territory heretofore acquired. Vermont was the first State to come into the Union after the formation of our Government with a population of only 85,485. and New Mexico now has a population more than four times the population of Vermont when admitted into the Union. Indiana, the home of the junior Senator from that great State, who now so ably protests against the admission of New Mexico and Arizona as separate States, came into the Union with only 24,000 population, while New Mexico has a population of more than 300,000. Minnesota came into the Union with a less population than either of the Territories now seeking statehood possess.

Thirty-two States have been admitted into the Union since the organization of our Government, and only six of them had a population larger than the population of either New Mexico or Arizona. Kentucky, 73,677; Tennessee, 60,000; Ohio, 42,366; Louisiana, 76,506; Indiana, 24,520; Mississippi, 75,444; Illinois, 53,211; Alabama, 127,901; Maine, 298,375; Missouri, 66,586; Arkansas, 52,240; Michigan, 160,000; Florida, 72,000; Iowa, 153,000; Wisconsin, 300,000; California, 92,507; Minnesota, 172,053; Texas, 150,000. Mark you, the great State of Texas, with more than 260,000 square miles of land, came into the Union with less population than now reside in either New Mexico or Arizona. Oregon came into the Union with 52,465; Kansas, 107,206; West Virginia, 440,000; Nebraska, 122,993; Nevada, 42,491; Colorado, 122,993; North Dakota, 135,000; South Dakota, 328,808; Montana, 132,159; Washington, 340,390; Wyoming, 60,703, and Utah, 276,746.

It will thus be seen that we have heretofore admitted into the Union twenty-six States with less population than either of the Territories now seeking statehood possess. A critical examination of our history will clearly show that our policy has always been to consult the wishes and interest of the population seeking statehood, and to make small States when desired, easily and economically governed, above all keeping in view the convenience of the people desiring statehood.

I have heretofore contended that the only expression by Congress fixing the qualification for statehood was the ordinance of 1887, providing that 60,000 inhabitants shall entitle such Territory making the application to statehood. It is true that a different rule was adopted in the admission of Kansas. The Committee on Territories contended that admission ought to be based on the unit of representation in Congress. that the Territory seeking admission should have at least sufficient population to entitle such State to one Representative in Congress.

We have not adhered to it, but on the contrary we have violated it in more instances than we have adhered to it. You will find that of the States which have been admitted into the Union since we adopted the rule in the Kansas case a majority came in with less population than was necessary to give such a State a Representative in Congress.

This rule, as I have said, has not been followed, and even should it be followed now, New Mexico has sufficient population clearly to entitle her to one Representative in Congress, and nearly enough for two. Arizona, according to the census taken by the Territory last year, had almost enough population to entitle this Territory, if admitted to statehood, and, by this time,

in all probability, has ample population for such representation, based upon our last census. So that under any rule you may lay down, so far as population is concerned, these Territories ought to be admitted to statehood.

It is a serious matter to unite these two Territories, against the wishes of the people, residing hundreds of miles apart, to call upon them to go to a capital eight or nine hundred miles away, placing them at this great inconvenience, when we could easily grant to each of them statehood.

But, I repeat, we have not been governed by this rule since it was adopted. Nevada came into the Union with only 42,000 inhabitants, and at that time the basis of representation was over 107,000.

Idaho, if I remember correctly, came into the Union with a population of 82,000, and at that time the basis of representation in Congress was 173,000. Wyoming came into the Union with only 60,000 people, and the basis of representation in Congress at that time was about 173,000. We have admitted State after State into the Union with less population than required to give representation in Congress. Now, why discriminate against New Mexico and Arizona? If the majority is determined to pass this measure, let us adopt the amendment offered by the senior Senator from Ohio, which provides that this union of the two Territories as one State must first be approved by a majority of the voters of each Territory before such union shall take place. These two Territories have existed for fifty years as separate and distinct Territories, with different customs, habits, laws, different modes of religious worship, and we certainly should not unite them unless a majority of inhabitants residing in each desire such union. The twentieth section of the bill provides that the convention to frame a constitution for the two Territories as one State shall consist of 110 delegates, 66 of which delegates shall be elected from the Territory of New Mexico. This is manifestly unjust to Arizona; this would give New Mexico a majority of the votes of the convention and would enable this Territory to form a constitution in the interests of New Mexico and directly against the wishes of the people of Arizona. Antagonisms would spring up that would have no ending. New Mexico has a larger voting population than Arizona and could adopt a constitution against the wishes of every voter in Arizona. New Mexico would have a majority of the legislature after the State was organized, and would be able to take charge of all three branches of the government, and could extend the laws, customs, and religion of New Mexico throughout Arizona against the wishes of the people residing therein.

Who can tell what results might follow? This unhappy and unnatural union would plant the seeds of hate and animosity, resulting in unending strife and probably bloodshed. If this union shall be made, and it ought not to be, let us give to each Territory an equal representation in the convention, and under no circumstances give one the advantage of the other in the formation of the organic law of the new State. It will be far better to heed the wishes of an overwhelming majority of the people residing in each Territory and grant them separate statehood. No one residing in either Territory has asked for single statehood, provided separate statehood could be obtained. The last Republican convention nominating a candidate to represent New Mexico in the Fifty-ninth Congress adopted resolutions in favor of single statehood, and the Democratic convention did likewise. The Territorial Teachers' Association, representing every section and every important public institution of education in Arizona, unanimously adopted resolutions in 1904 against union. Well did this association say that the differences of educational organization and social conditions, the size of the proposed State, and the difficulties of intercommunication between the different sections are unanswerable arguments against such union. The boards of trade, church organizations, bar associations, the newspapers, and almost the entire inhabitants of the two Territories desire separate statehood.

I have never yet seen a single individual residing in either Territory in favor of union, provided they could get single statehood. I lay down the proposition to-day that if we pass this measure uniting these people against their wishes, no one will want it except those who fear they can not get statehood without it.

Mr. BATE. I will ask the Senator, in that respect, if I am mistaken in understanding that Governor Brodie himself, in a strong phrase, states that he has not met a single individual in favor of the combination of the two States?

Mr. CLAY. I have so understood; and the present Delegate in Congress, in a very able speech—a speech that ought to have given him a renomination—said he accepted the bill reluctantly, accepted it with shame and with humiliation,

"I do not want it. I have been begging for bread for years and years. You would not give me bread. You have now given me a half loaf, and I accept that half, because I am starving for statehood, and can not get anything else."

Such legislation, in my opinion, is not in keeping with our free republican institutions. In a Government like ours we ought to consult the people to be affected by such legislation. I think it would be extremely unfortunate to pass this measure and force these people to unite against their will.

When we join these Territories together and form this unnatural and undesirable union we do so against the protest of the entire inhabitants of the Territories. We forever destroy many of the customs, habits, and laws dear to the people residing in those Territories. We fix the basis for an interminable feud between different races, when all of this could be avoided by granting simple justice to each Territory. We violate party pledges. We crush hopes so long cherished. We most seriously disappoint an intelligent, conservative, and patriotic people by denying to them the same blessings which we have granted to others seeking at the hands of Congress to become members of this Union. Heretofore, when other Territories have knocked at the door of Congress asking for admission, we heeded their demands. They were admitted into the Union. Now, why make this discrimination against New Mexico and Arizona? For one, I will not be a party to it. This great Government can not afford to violate its own plighted faith and force a policy on these Territories against their will. I believe we will consult their interest and heed their wishes.

Mr. NELSON. I desire to inquire of the Senator from Tennessee if other Senators opposed to the bill are ready to speak to-day?

Mr. BATE. I will say to the Senator from Tennessee that we have none who wish to go on just now. I understood that the Senator from Minnesota himself would like to make some remarks. We shall be pleased to hear from his side.

Mr. NELSON. I do not want to interfere with any other speaker.

Mr. BATE. You will not, I assure you; and we shall be pleased to hear you.

Mr. NELSON. Mr. President, for a moment and in rather a perfunctory way, I propose briefly to reply to some of the arguments advanced by the Senator from Idaho [Mr. HEYBURN] and in part advanced by the Senator from North Carolina [Mr. SIMMONS]. Before doing so, however, I wish to call attention to some of the statements made by the Senator from Georgia [Mr. CLAY].

A majority of the people of New Mexico, he states, if they can not get single statehood, want joint statehood. But there are a large number of people in New Mexico who prefer joint statehood to any other statehood. There is quite an element that does not want any statehood at all; and to support this statement I ask the Secretary to read a portion of an article, which I have marked, from the Albuquerque Morning Journal, Albuquerque, N. Mex., January 10, 1905. I may say that I do not know what the politics of this paper is—whether it is Republican or Democratic.

Mr. BAILEY. If it is wise, it is Democratic; if it is otherwise, it is Republican.

The PRESIDENT pro tempore. If there is no objection, the Secretary will read as requested.

The Secretary read as follows:

NEW MEXICO STANDS PAT FOR JOINT STATEHOOD—GENERAL CANVASS OF ENTIRE TERRITORY MADE BY THE MORNING JOURNAL SHOWS THAT 85 PER CENT OF THE PEOPLE OF TOWNS PREFER UNION WITH ARIZONA TO REMAINING A TERRITORY.

From a careful canvass made of Albuquerque and the other larger towns of New Mexico by the Morning Journal, embracing business and professional men, stockmen, farmers, and mining men—excluding politicians—it is shown finally and conclusively that the agitation in Santa Fe and elsewhere against joint statehood originates in a very small ring of men, who are opposed not only to statehood with Arizona, but to statehood of any kind, and who propose to keep New Mexico a Territory as long as possible. This canvass shows that the statements made by Governor Otero in his annual report and by one or two newspapers in the Territory are not well founded. The majority of the people of this Territory are in favor of statehood of any kind in preference to remaining a Territory. They would rather have single statehood, but failing in that they would gladly accept joint statehood. There are a considerable number who flatly and openly express their preference to joint statehood, while there are others who are flatly and openly indifferent. The people may be divided into the following classes:

An overwhelming majority would like to have single statehood, but failing of that would be willing to accept and would vote for joint statehood with Arizona.

A large number who favor joint statehood alone and who would be against single statehood.

A considerable number who declare for single statehood only and who say they would vote against joint statehood.

A small ring of politicians and their followers who are opposed to joint statehood and who would be opposed to single statehood should the issue come before them.

The Morning Journal has ascertained that in Santa Fe, where the opposition to joint statehood has its center, enemies of the joint statehood bill, in an effort to get signers to a telegram of protest, failed to get a dozen signatures aside from office holders under the Territorial government. On the other hand, friends of the bill were able in an hour to get the signatures of practically every business man in Santa Fe, numbering something over 150, to a telegram indorsing the joint statehood bill. This proves conclusively that the majority of the people of the capital, the hot bed of the opposition, favor the joint bill.

Mr. NELSON. A part of the argument of the Senator from North Carolina [Mr. SIMMONS], as well as of the Senator from Idaho [Mr. HEYBURN], in opposition to uniting Arizona and New Mexico as one State was based upon the provisions of the treaty of Guadalupe Hidalgo made with Mexico in 1848, by which this territory was ceded to us. The Senators argued that we had no right, at least no moral right, under the provisions of that treaty to unite these two Territories into one State. The only provision of that treaty which bears at all upon the subject is article 9, which is as follows:

The Mexicans who, in the Territories aforesaid, shall not preserve the character of citizens of the Mexican Republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction.

Now, this is all there is in that treaty which bears on this subject; and if you construe it in the most liberal manner possible it simply amounts to this, that at some time in the future, wholly in the discretion of Congress, we will admit this Territory into the Union as a State or States, without specifying anything in reference to the particular size of the State or States. There is nothing in this article that can be used as an argument why we have not the right—the moral right, I mean, as distinguished from the legal right—to unite these two Territories into one State.

By this treaty we secured not only what is now the State of California, but what is now the States of Utah and Nevada, as well as the Territories of Arizona and New Mexico. By a supplemental treaty in 1853 we secured in the southern part of Arizona, to straighten our boundary, a little strip of land commonly called the "Gadsden Purchase," which is marked on the map yonder on the wall [indicating]. There is nothing in that except it stipulates that this article 9 shall remain in force.

So, Mr. President, it seems to me farfetched in the extreme to use this article as a basis for an argument against the joining of these two Territories into one State.

Another suggestion was made by the Senator from Idaho yesterday, and when he made it I felt like interrupting him, but as a rule I never like to interrupt speakers in the midst of an argument. However, I think he inadvertently fell into an error and I desire to correct it. It was in reference to the matter of Oklahoma and Indian Territory. I will give what he stated in substance. I can only give the substance of it; I will not undertake to quote his words. If I understood him correctly, he stated that Oklahoma was clearly entitled to statehood and ought to be admitted alone, but as to Indian Territory he thought that that was not quite fit and that it ought to remain outside for a longer period.

Now, in respect to the last part of his statement particularly, I desire to draw the attention of the Senate. If there is any portion of these four Territories that now needs statehood more than any other, it is the people of Indian Territory. People form a misapprehension because of the name. They think that that Territory is settled by the members of the Five Civilized Tribes. As a matter of fact, Indian Territory has to-day a population of upward of 600,000 people, I think. Over four-fifths, I think five-sixths, of that population are white people. At least four-fifths are white people of the same character and the same abilities and the same energy as the people of Oklahoma Territory. The people of Oklahoma Territory have a Territorial government. They have a governor and a secretary of that Territory. They have a legislature and they have all the paraphernalia that appertains to an embryo State government. But the four or five hundred thousand white people in Indian Territory are to-day utterly helpless. Mr. President, outside of a few of the municipalities, a few of the incorporated towns, where they have organized local municipal governments and have established schools, they have no government in that Territory except what little they have under the Federal courts and the court commissioners. They have no means by which they can provide themselves with public schools except by private subscription. Those people have come in there with the permission of the Indians and leased lands and developed the country and made Indian Territory to-day as prosperous and as good a country as Oklahoma Territory. And it is a most valuable Territory. I called attention to the fact two years ago in my discussion before the Senate that that Territory is not only possessed of a large and valuable agricultural area, but that it has a fine body of forest in the southern part, if I remember aright, in the Choctaw Reservation.

Mr. HEYBURN. Will the Senator permit me on that point?

Mr. NELSON. Certainly.

Mr. HEYBURN. I would not interrupt the Senator except that he is passing the point. I would inquire by what tenure the white people are in the Indian Territory; if they are not merely there as lessees of Indian lands under conditions where they can never acquire title to them or become permanent residents?

Mr. NELSON. I wish to reply to the Senator by saying that while in the past most of them, nearly all of them, except those who have acquired title to their lots in incorporated towns, are there as lessees, they have come there by permission of the Indians and by permission of the Interior Department and have settled and developed that country.

Now, we have about completed our system of allotments in that country; that is, the great work of taking the estate of the five Indian nations has been nearly accomplished. The land has been allotted to those Indians in severalty. There is a restriction upon their homestead allotments in most cases of 40 acres, in one case of 160 acres; but practically a large share of the restrictions have been removed, so that by the time this law could become effective as to Oklahoma and Indian Territory, in March, 1906, those lands aside from the homestead allotments to the Indians would be in market and could be secured by actual settlers.

In addition to developing the agricultural lands, the people have gone in there as lessees to develop their coal lands. They have valuable coal mines and other minerals in that country.

Mr. STEWART. Will the Senator allow me?

Mr. NELSON. Certainly.

Mr. STEWART. I should like to correct the Senator. Unless we amend it, there would be no chance for homestead settlers to get in there. The best land now by various devices is in the hands of lessees or pretended lessees. They have possession. The land is being allotted to the Indians, and through processes they have there, by collecting thirty or forty Indians together, they make an arrangement with them. They take them to the land office or take them to the Commission of the Five Tribes, and they take a lease on them for five years at from thirty to sixty dollars a year for a piece of land worth probably $500 or $1,000 a year. Now, they are in possession. The Indians are not in possession. By the law they can get the lease. The Commissioners make a deed, which is executed by the chief of the nation, the governor of the tribe. The deeds are being executed now, and one year from now they can sell, as they will, for a mere nominal sum, because they are really in the hands of these speculators. All the lands, that is, the best of them, will fall into the hands of speculators. Consequently, if in the passage of this law there is any anticipation that any portion of this land is going to get in the hands of actual settlers, who will cultivate their own land, it will be a misapprehension. If there is not something done the lands will be held by a few and the Indians will have nothing; they will be pauperized. The lands will then be leased to whoever will be willing to take the lease. The people will be very unwilling to take leases there because they will be in a very unpleasant neighborhood to live. The Indians will be troublesome; they will be paupers. If you let the thing go on as it is now I should be very much opposed to making it into a State or doing anything with them, unless we can provide some way to protect those Indians and protect persons who desire to make homes there.

Mr. NELSON. As I understand the drift of the Senator's argument, he prefers——

Mr. SPOONER. Will the Senator allow me a moment?

Mr. NELSON. Certainly.

Mr. SPOONER. The statement of the Senator from Nevada as to the condition of the Indians there is rather startling. I should like to inquire of the Senator how much, if any, of this situation is due to the removal of the restriction from their power of alienation?

Mr. STEWART. In the last appropriation act?

Mr. SPOONER. In the last appropriation act.

Mr. STEWART. A part of it is due to that. Unfortunately the committee did not understand the situation or it would not have allowed the restriction to be removed to the extent it was done. It was to be allowed under such regulations as the Secretary of the Interior may prescribe. He has prescribed regulations which are not effective, because having selected their lands and made their arrangements to purchase them when they get the right to purchase them they find that the land has been

leased. The system of leasing has prevented the provision of that act from going into effect, by which bona fide settlers might have gotten possession. The right is not sufficiently guarded. It is not appraised before it is sold, and it is not properly guarded. But the restrictions are removed from others, which was premature. Those restrictions do not apply until they have something to sell, and they can not sell it until they have had it allotted to them and get their deeds. The Curtis Act provided that after they get their deeds, in one year from that time, they can sell the same as anybody else. But there was a previous act to the act of last year which applied to only a part of the Indians and allowed them to lease for five years.

Mr. BERRY. Will the Senator permit me to ask him a question?

Mr. STEWART. Certainly.

Mr. BERRY. Is there not a restraint in regard to the alienation of a homestead? The owners of the homesteads are not allowed to sell for a number of years.

Mr. STEWART. For twenty-one years, and they must have 40 acres. But they are leasing their homesteads. So they are not very valuable as homesteads.

Mr. BERRY. Was not the removal of the restriction only from the negroes under the last appropriation act? Did it not apply only to the land that was given the negroes? Did it apply to Indian lands?

Mr. STEWART. No; it was only removed as to them, and the effect of that removal upon the negroes was very apparent. When I first entered the Territory I observed negroes driving fine equipages. One in particular had two cream-colored horses as pretty as you ever saw and a Brewster buggy. The negro and his wife were dressed up in the finest fashion and driving through the streets. I asked how that was; nobody else was riding in such style in the Indian Territory. I have not seen it in any other Territory. It was the finest equipage I had seen for years in the West. This is how it was: The negro had a good piece of land. He sold it for a good price and invested it in this way; and in a month he will have nothing. That will be the whole of it. That is an illustration of the way they squander their money. I observed it with regard to most of the negroes who sell their lands, squander their money on gewgaws and foolish things, and it really does them no good. They are not capable of managing their own affairs, whoever may be to blame for it. I am to blame for it to some extent, because I ought to have gone down there before. I regret that I did not. The condition of things there is such that if we pass this bill, or if we do nothing, the great mass of the good lands will fall into the hands of a few speculators, and it will be a country of lessees and not of actual settlers. My anxiety is that some law shall be passed whereby actual settlers can obtain a foothold.

I have prepared an amendment and offered it to this bill which it seems to me will effect a cure, and the Department of the Interior have also prepared a bill which I have introduced and had referred to the Committee on Indian Affairs.

Mr. BAILEY. Will the Senator from Nevada permit me to ask him a question?

Mr. STEWART. Certainly.

Mr. BAILEY. Does the Senator from Nevada intend that the Senate shall understand that the Interior Department prepared a bill that abolishes the administration of the estates of decedents and minors in the courts of that country and subjects them to the arbitrary will and disposition of an appointee?

Mr. STEWART. We certainly have a bill that does that.

Mr. BAILEY. Did the Interior Department prepare that bill?

Mr. STEWART. One of them. If you will come before the committee to-morrow morning and hear the discussion you will see the two bills.

Mr. BAILEY. Doubtless I would be enlightened but not convinced by what occurs.

Mr. STEWART. But I am not convinced that the present condition of things is not reprehensible.

Mr. BAILEY. Mr. President, I agree with the Senator——

Mr. STEWART. Let us look——

Mr. BAILEY. If the Senator from Nevada will permit me just a moment——

Mr. STEWART. Certainly.

Mr. BAILEY. I agree with the Senator from Nevada that there is now much, and that there has for a long time been much in the Indian Territory to criticise, but the Senator from Nevada and many other Senators in this body make a grave mistake in charging that practically everything there is tainted with fraud and injustice. Those people are my neighbors. A very narrow stream separates that Indian country from the State of Texas. Many of them were formerly my constituents and my friends; and I undertake to say that a more honorable and upright set of men have never yet settled a new State in the history of this Union. While some of them, from all sections, do prey upon the helpless Indian, that is not true of even a large percentage of those people.

Mr. STEWART. I do not pretend to say how large a percentage of good people are there. There are some six or seven hundred thousand of them. A great majority of them are undoubtedly good people. I am speaking of the men who are getting the land under these leases. I am speaking of such men as Cobb, who told me he had gotten 120,000 acres in nine months. I found that a great many of them were engaged in that business. I am speaking of them.

Mr. BAILEY. Does not the Senator believe, though, that under the law as it now stands, by a proper procedure in the courts, those leases could be vacated?

Mr. STEWART. Not in time to effect any good.

Mr. BAILEY. Will the Senator, then, permit me to ask him a further question?

Mr. STEWART. I have provided for it in my amendment and made it the duty of the superintendent to examine them, and if he is not satisfied, to proceed in the court and have an investigation made.

Mr. BAILEY. Will the Senator from Nevada permit me to inquire if he thinks as a matter of law that Congress can destroy a lease already entered into between parties?

Mr. STEWART. Well, it can not.

Mr. BAILEY. Then, as a matter of fact, about the only way to reach and set aside these fraudulent leases, and therefore void leases, is to resort to the court.

Mr. STEWART. In my amendment I provide for that very thing. First, I provide for a superintendent to have the cases investigated, and if he thinks they ought to be investigated before a court—that is, if there is anything wrong, inadequate consideration, fraudulent or undue influence—he is to resort to the court.

Now, with regard to the administration of the estates of these Indians, I found this condition of things under the Arkansas law: They were appointing guardians of the property. At Tishomingo the governor and some of the leading Indians were there, and they came and asked us if that could be done. They had taken the Indians into guardianship and they then had the allotments leased. I have not examined it, but that is the claim down there. It goes through probate proceedings. I was told that they sell the land for the benefit of the estate by the order of the court. They are working very hard to get hold of the estates of deceased persons. Whether that has succeeded or not, I was told that they are going around and hunting up the estates of deceased Indians, because when sold under the order of the probate court they would get complete title, free from the limitation of the Indian title. There is and has been great anxiety to get hold of those estates. That ought not to be. Under the amendment which I have proposed there can be judicial officers appointed for the Indians. I do not believe that the same probate system is applicable to Indians as to white people, because there are many Indians whose estates and persons ought to be taken care of; Indians who can not take care of their own property who will need guardians, and so forth, appointed under different rules from those relating to the whites. When a white person's property is administered upon and sold under order of the court, of course, the title ought to be completed and perfected. I do not think the Arkansas law was ever made with a view to the case of the Indians, and consequently provision has been made for such cases. I do not like the Department bill as well as I do my amendment. I have followed it along and attempted to have no provision in my amendment that would prevent a man from having his day in court. I do not believe in proceeding without due process of law. I am willing that my amendment shall be amended if there is any place where that right is infringed upon.

Mr. BATE. I wish to ask the Senator from Nevada a question, as he seems to be familiar with this subject. What becomes of the title of the Indians? The Indians have no right to give it away.

Mr. STEWART. The Indian title is ended.

Mr. BATE. But the tribal relations still exist.

Mr. STEWART. Tribal relations terminate on the 4th of March, 1906.

Mr. BATE. By what authority?

Mr. STEWART. By the authority of treaties made between the Indians and the United States. That is all agreed to and provided for.

Mr. BATE. Only as to part of them.

Mr. STEWART. As to all. They have all agreed to the sev-

erance of the tribal relations and to the allotment and segregation of their lands.

Mr. BATE. How was that brought about?

Mr. STEWART. By treaties with them and contracts made with them, which have been enacted into law.

Mr. BATE. But still, Mr. President, the tribal relations exist to-day.

Mr. STEWART. Yes; they exist to-day.

Mr. BATE. Then the Indians are the owners of the land?

Mr. STEWART. Certainly; but they have agreed to have the lands sold and allotted.

Mr. BATE. But to-day they are the owners of that land, and we are proposing to act as if the tribal relations had been severed and the allotments had been made.

Mr. STEWART. They have agreed to this modification. They would still be the owners of the land.

Mr. BATE. They have not parted with their title, then?

Mr. STEWART. No; but they are trying to do so.

Mr. BATE. The tribal relations still exist.

Mr. STEWART. But the Indians have agreed that the allotments shall go on, and the allotments they have agreed to have been deeded, and they are making deeds now.

Mr. BATE. That, of course, does not carry with it the title until it is consummated. True, such deeds might be placed in escrow.

Mr. STEWART. That would carry with it the title after the passage of the law.

Mr. NELSON. Mr. President, I will now resume the thread of my remarks, which were interrupted by the inquiry of the Senator from Nevada [Mr. STEWART].

First of all, I want to state to Senators that they are very much mistaken as to the character of this population. As I have already stated, I think that five-sixths of the population of Indian Territory is composed of white people, equal to those to be found in the Territory of Oklahoma or anywhere in this country. The remainder of the people, what are known as members of the Five Civilized Tribes, consist of between eighty and ninety thousand. I am not sure of the exact figures, but out of that eighty or ninety thousand there are only about twenty or twenty-five thousand who are full-blooded Indians. The balance consists partly of diluted Indians—largely diluted with white blood. Then there is a class belonging to the tribes who have no Indian blood in them at all. They have become members of the tribes by adoption or by intermarriage. Then there are quasi members belonging to the tribes who are descendants of freedmen, or are themselves freedmen. So that, practically, in the Indian Territory to-day we can say that at the utmost, in all that large population of upwards of 600,000, there are only about 25,000 real Indians—not any more than are to be found in the Territory of Oklahoma to-day.

The proposed law in respect to Oklahoma and Indian Territory will not become effective, even if it be passed, until they adopt a constitution, the people ratify it, and the President issues his proclamation. They do not become a State until March, 1906. By that time the tribal governments are to cease; the Indians will have become citizens of the United States, and they will have their allotments of land in severalty.

I have already gone over, both in my remarks two years ago and in my remarks when this bill was first called up in the Senate at this session, the question of allotments. The bulk of allotments of most of the tribes has been completed. I shall not go into that question any more in detail at this time; but I want to say that I think by March, 1906, the allotments will have been practically completed, and by that time the tribal governments will have ceased, the Indians will be citizens of the United States, and their condition in respect to their real estate will be this: Under the laws and treaties which have been adopted they got two classes of allotments. One was known as homestead and the other as not homestead. The homestead allotment in case of four of the tribes, if I remember correctly, was a 40-acre allotment, in some cases an absolute 40 acres, in other cases 40 acres based upon valuation, and in another case a homestead allotment as to one tribe, which I think was the Cherokee, of a 160-acre allotment.

In respect to the so-called homestead allotments, they are inalienable, untaxable, and unencumberable for a period of twenty-one years, with the exception of the case of the Seminoles, whose homesteads are inalienable in perpetuity.

In respect to the other lands, in most cases there was a limitation of the power of sale for five years after allotment. In one case there was a limitation so that such a proportion might be sold in one year, such a proportion in two years, and such a proportion in three years. But this whole thing was changed by a paragraph in the Indian appropriation act which passed at the last session of Congress. Under that paragraph, which I quoted in my remarks the other day, and which I will not reiterate to-day in terms, to a large extent as to all the other lands except homesteads—the homesteads that I have described—and as to lands owned by minors, the restriction on alienation is absolutely removed except as to those of Indian blood, and as to those of Indian blood the restriction can be removed at the discretion of the Secretary of the Interior. That is the condition.

My heart goes out to those half million people in the Indian Territory who are to-day without any government. They do not now enjoy the advantages which the people of Arizona, of New Mexico, and of Oklahoma enjoy. They are there to-day, outside of the incorporated towns, to a large extent as tenants. In the towns which have been incorporated, the lots have been sold, in which case they have secured title to their lots; but outside of the towns they hold as tenants in some form. They are there by permission of the Indians and by the permission of the Interior Department. They have made that a wealthy and prosperous country, more prosperous than it ever could have been if it had been left to these eighty or ninety thousand members of the Five Civilized Tribes. For the good of all those people they need State government above anything else, and they need it to a far greater and more urgent extent than is the case with the people of any of the other Territories.

Under those circumstances the people of Indian Territory and Oklahoma are to-day agreed almost unanimously to become united as one State, and I submit to the Senate with that population and those resources and that area we ought to grant their request.

Mr. BAILEY. Mr. President——

The PRESIDING OFFICER (Mr. KEAN in the chair). Does the Senator from Minnesota yield to the Senator from Texas?

Mr. NELSON. Certainly.

Mr. BAILEY. I do not subscribe to the Senator's statement that the people of these two Territories are practically unanimous in their desire for single statehood. I think if they were offered joint statehood or separate statehood a majority of each Territory would prefer separate statehood, but I have no purpose of entering into a debate of that kind now.

What I rose to ask the Senator was, if he does not think it would be an excellent idea, if these Territories are now to be united into one State, that we should begin by wiping out the old lines of separation between them? If they are admitted, and the bill admitting them begins to perpetuate the old dividing line, as it does in its provisions as respects the court, that dividing line will grow deeper and wider with the years—a new Mason and Dixon's line, as it were—with respect to this particular State. If the committee could provide a way to divide that Territory into two judicial districts, making the line run north and south, without reference to the old line between the two Territories, I believe it would perform a useful and more than a mere sentimental service.

I am not myself sure, but it seems to me that there are section lines—that is, lines of the sections of land—and that those sectional lines are in some cases coincident with the lines of the counties, and I ask if it would not be practicable for the committee to re-form its present provision with reference to the judicial districts and make the lines run north and south?

I am opposed to uniting those Territories, but if they are to be united politically I should rejoice to see them united as thoroughly as possible in every other way. We can do for them an excellent service by completely effacing that line which has separated the two Territories; and I ask the Senator from Minnesota if that is not possible?

Mr. NELSON. Does the Senator want a reply?

Mr. BAILEY. I do. I was asking for information.

Mr. NELSON. I will say to the Senator that it is only in this one respect—in providing for the establishment of two judicial districts—that the bill adheres to the line between the two Territories. Now, speaking for myself—and I have no right to speak for anybody else on this proposition—I can say that I do not feel sufficiently advised as to whether any change should be made in this particular; or, if a change should be made, what would be the proper line. The way I look at the question is this: Under this bill, if it becomes a law, those people would be entitled to elect Members of Congress at the time they ratified the constitution, and the State would be admitted into the Union—assuming that everything transpired as contemplated—in March, 1906. They will then have their Members of Congress elected, and they will come here with two Senators and five Representatives, who will be better prepared than, I think, our committee is to-day to say what the proper dividing line between the two judicial districts should be. I think when their five Representatives and two Senators come here to Congress

and desire this division they would know better than we the proper line, and I have no doubt that Congress would give it, for it would be only a question of changing the boundaries of two judicial districts.

Mr. BAILEY. The trouble with that is that we are initiating a division and recognizing it. That is going to be followed to a practical certainty by the election of one Senator from what is now embraced in the Territory of Oklahoma, and the other from what is now embraced in Indian Territory. I would, if possible, like to see that line of separation, or demarcation we will call it, effaced. The Senator from Minnesota practically admits that it is an arbitrary one now, adopted without reference to the population or to the convenience to be served, and adopted simply because it is an established one and saves us the trouble of establishing a better one.

The Senator will understand, of course, that I make no complaint against the committee. I have no doubt that if I had been a member of the committee, further removed from those people than I am, I would have accepted that not only as a convenient but as a somewhat natural division of the new State into judicial districts; but knowing, as I do, that there is in both those Territories to-day a strong disposition to treat them as made up of two separate parts, using the old present dividing line, I think it is important that it be effaced as rapidly as possible. I should like to see this bill pass without anything in it to indicate that we had done violence to those two Territories by compelling them to unite.

That is not the only particular in which this bill is absurd. The provision with reference to the judicial districts is not an absurdity, but you have an absurdity in the bill with reference to prohibition. You have in this bill a provision that prohibits the sale of liquor in what is now the Indian Territory and permits it in what is now the Territory of Oklahoma, thus applying a rule to them as separate entities. Yet the Senator from Minnesota is not unmindful of the fact that in this division throughout which the sale of liquor is now prohibited there is not a single blanket Indian to-day, whereas in Oklahoma there are seventeen or eighteen thousand blanket Indians. I presume, however, that the committee has taken the precaution to include within the prohibition district the present grazing reservations of the Kiowa and Comanche Indian tribes, because in those districts are practically the entire population of blanket Indians to be included within the boundaries of the new State.

Of course, so far as I am concerned, independently of how extensive the committee make this prohibition, I would never vote that the Federal Government should regulate the sale of liquor in any Commonwealth of this Union. I think if there is any purely domestic matter with which the State, and the State only, ought to deal, it is the question of permitting or prohibiting the sale of whisky. But assuming that that amendment will be adopted—and it never could have been assumed a few years ago that Congress would by condition assume to control a purely domestic arrangement in a State—but assuming that the amendment which now appears in the bill will be adopted, you will have two important provisions still perpetuating the lines which, when Territories, divided these two entities, and continuing that division line when they both are merged into one State.

Mr. NELSON. Mr. President, in reference to the last provision to which the Senator from Texas has called attention, I will say that that is not an arbitrary matter. I think I may say justly that that provision was incorporated because of obligations under old treaties with the Five Civilized Tribes, not for the purpose of perpetuating an arbitrary line or segregating the people of the Indian Territory from Oklahoma, but rather because of our obligations under former treaties to prevent the sale of liquor in that Territory.

There are different views in regard to the matter. There are some who claim that we never ought to allow the sale of liquor in the Territory, and some who have insisted upon a twenty-one years' limit. The committee finally came to the conclusion that at the end of ten years the Indians of the Five Civilized Tribes, in respect to the question of drinking intoxicating liquors, would be able to take care of themselves, and would be upon a footing with the other people of the Territory. That is all there is of it. The committee may have erred in its conclusions, but that is the reason for making the distinction between the two Territories.

Mr. BAILEY. In speaking of the obligation of the Government to prevent the sale of liquor in the Indian country, the Senator refers, of course, to the same treaties under which the Government guaranteed the perpetual possession of that land to those Indians. They not only had a treaty right to that land, but, as to the Choctaws, they had a solemn deed executed by this Government, and the covenant of that deed was that they and their descendants should possess and occupy that land as long as the grass grows and the water runs and the sun shines. Now, in view of the fact that the Government has not respected that solemn covenant to hold the Indians in possession of their land, it seems a little strange that we should stretch the powers of the Government again to establish a Federal prohibitory law over one-half of what is to become a sovereign State.

Mr. NELSON. I do not care to go into any detailed discussion in respect to that question. It is to my mind largely a moral question upon which Senators may well differ. Technically, in admitting that Territory as a State, we have a right to do what we see fit in the matter. We have a right to enact legislation with that prohibition in it or have a right to leave it out. But the inclusion of the provision is a yielding to the moral sense of the community that we ought, for the protection of the Indian, to put in this restriction, this prohibition period of ten years.

I will not undertake to argue with the Senator whether that moral sentiment is well grounded or not. You may apply to it the old Latin maxim "De gustibus non est disputandum"—there is no accounting for tastes. So in respect to this matter. There are a good many people who believe that we ought not to have any restriction; that when we provide that no liquor shall be sold to the Indian that is the extent of the inhibition the bill ought to contain.

Mr. MONEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Mississippi?

Mr. NELSON. I will yield in a moment, if the Seantor will allow me.

There are others who think that these Indians, these members of the tribes, are still in a measure our wards, and for their protection, not for any other reason, we ought to have this limited ten-year prohibition. Now I yield to the Senator from Mississippi.

Mr. MONEY. Mr. President, I desire to ask a question of the Senator. He said we have a right to put in this bill this amendment or to leave it out. I want to ask the Senator if he believes, if that provision should be put in the law and that Territory should come in as a State, it would have the slightest binding effect upon the new State? It has been held over and over again, if the Senator will pardon me, that whatever conditions may be imposed as to its admission, when a State is once admitted to this Union that State becomes a sovereign, the peer of all the other sovereigns, and there can be no condition applied to one State that will not equally apply to another or to all of them. So I would like to ask the Senator if he thinks the provision would be worth anything if put in the bill?

Mr. NELSON. I think Congress has the power to impose such a restriction, but whether it will be of any practical value is hardly for me to say. If the people of the Indian Territory are as good as the Senator from Texas [Mr. BAILEY], and I believe they are, they will no doubt take great pleasure in enforcing that provision and see that no liquor is sold during the ten-year period. If they are a lawless set, determined to disregard law and constitution, then the provision may be of no practical value.

Mr. MONEY. Mr. President, if the Senator will allow me to mterrupt him again——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Mississippi?

Mr. NELSON. Certainly.

Mr. MONEY. The Senator is not answering my question, but evading it. The question is not how good the people there are or whether or not they would be pleased with the amendment; they may choose to adopt it heartily and unanimously; but the question is whether it would be worth a cent and whether it would have any binding force whatever upon those people. Even if they proceed to enact a prohibition law, would it not have to be done upon their own motion and in their right as a sovereign State, and not on account of anything you may put in this bill?

Mr. NELSON. This is a provision that we require them to incorporate in the constitution of the new State——

Mr. MONEY. That would not make any difference.

Mr. NELSON. As a requisite for admission into the Union. I take it that the provision of a constitution of that kind, under such circumstances, would be binding. However, there are better constitutional lawyers in this body than I am, and I am quite willing to submit this proposition to their judgment instead of my own.

Mr. BAILEY. Mr. President, if the Senator from Minnesota will permit me——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Texas?

Mr. NELSON. Certainly.

Mr. BAILEY. I want to say to the Senator from Mississippi [Mr. MONEY] that the very injustice of this amendment is that it requires the constitutional convention in the new State to incorporate this prohibition provision in the constitution before it can be admitted to the Union. Undoubtedly the Senator from Mississippi is eminently correct when he says that the new State could take this provision out of its constitution, notwithstanding it is a condition imposed; but the trouble of it is that in order to take it out the State would be compelled to amend its constitution, and it would be compelled in that way to have the unusual vote required for a constitutional amendment, whereas if it were intended simply to require the new State to incorporate this provision in a statute, a bare majority could repeal it. Notwithstanding the requirement that the prohibition provision be incorporated in its constitution, the new State could undoubtedly repeal that or any other constitutional provison, but it would take the unusual majority. That is the injustice of a Federal law imposing upon a new State a domestic arrangement as a condition of its admission to the Union.

Mr. PLATT of Connecticut. Mr. President——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Connecticut?

Mr. NELSON. Certainly.

Mr. PLATT of Connecticut. I think in every act admitting a Territory to be a State since the foundation of the Government to the present time there has been in such act what is called a "compact" between the State which is to be formed and the General Government—that is, that the State in forming its constitution shall put into it certain things with relation to land, with relation to taxation, and various subjects. Now, I do not understand that in requiring in this bill that the new State shall pass prohibition laws, there is any difference between that in principle and what we have required all Territories to do when they came into the United States—make a certain agreement with the United States that they will do this or they will not do that.

Whether there is any remedy in case the State violates that is another question. We required the State of Utah to put into its constitution an agreement that it would pass laws forever prohibiting polygamy in the State, and I do not think that that stands on any different ground from what we are requiring here. But if Utah refuses to keep its compact in any particular, or any State which has made a compact refuses to keep it, whether or not the United States has any remedy is an entirely different question.

However, we are doing nothing unusual here. I do not suppose we can exclude a State after we have once admitted it, even if it does not keep its compact, and I do not know any way in which we can reach the question. But it seems to me we are doing nothing unusual here.

Mr. BAILEY. Mr. President——

The PRESIDING OFFICER. Does the Senator from Minnesota yield to the Senator from Texas?

Mr. NELSON. Certainly.

Mr. BAILEY. I think we are doing not only an unusual, but an unprecedented thing here, and I think the Senator from Connecticut, upon reflection, will not stand on his proposition that the sale of liquor is upon a level with the practice of polygamy.

Mr PLATT of Connecticut. Not in enormity or turpitude. I agree to that.

Mr. BAILEY. Then that itself might be such an extreme case as that Congress felt justified in imposing upon the State of Utah that condition.

The Senator from Connecticut, while not asserting it, does not deny my proposition that if the State of Utah had seen fit, after once being proclaimed a State of this Union, to repeal that prohibition against polygamy, the Federal Government would have been powerless to prevent it, and the only recourse for the Federal Government would have been the exercise of power to deny to the representatives of Utah admission to the House and to the Senate.

But if it had been another matter, like the sale of liquor, a purely police regulation, the Federal Government would not dare to go to the extreme of denying representatives from a State in the Union admission to the House and to the Senate, because that State in the exercise of its sovereign power had chosen to deal in her own way with a police regulation affecting her own people.

Mr. MONEY. Will the Senator allow me?

The PRESIDING OFFICER. Does the Senator from Texas yield to the Senator from Mississippi?

Mr. BAILEY. Certainly.

Mr. MONEY. I want to ask the distinguished Senator from Texas if it is not true that the police power is an inalienable one; that no community can grant it or divorce itself from it?

Mr. BAILEY. I think the Senator is clearly right.

Mr. MONEY. It is a necessity for the life of the community that it shall exercise the police power, and it can not grant it away or bargain it away.

Mr. BAILEY. And it would be an anomaly under our system of government for a State of this Union to be incapable of exercising its police powers.

I venture to suggest to the Senator from Connecticut that there is a wide difference between the prohibition of the sale of liquor and the prohibition of plural marriages. In my opinion the sale of liquor at most goes only to the question of the peace and good order of a community where it is sold or prohibited, while the permission of plural marriage goes to the very foundation of the Government itself, or goes rather to the purity of the home, which goes deeper even than the question of an organized government, and it might be permissible for Congress to impose a condition like that to take, as it were, a kind of bond for good behavior.

Mr. SPOONER. Has it that power?

Mr. BAILEY. Ah, the Senator did not watch what I said with his usual attention. I said it might be permissible. I do not think it is. I do not think the Federal Government has the power to impose upon any State, admitted or to be admitted, its will in respect of the domestic affairs of that State.

But I am not willing to allow the statement to pass unchallenged that the prohibition of plural marriage involves no further question than does the prohibition of the sale of liquor. One can only be a police question. The other may be a wider and a broader and a deeper question.

Mr. PLATT of Connecticut. Mr. President, legally I do not see any distinction. Morally I can see distinctions. But the question which gave rise to this discussion was whether the United States could impose upon a Territory certain conditions of admission; in other words, whether they could admit it if it would put into its constitution, as a condition of admission, certain things—agreeing not to pass certain laws, or to pass certain laws. While I agree that plural marriages are to be considered, so far as moral grounds are concerned, so far as their morality is concerned, so far as the effect upon the General Government is concerned, entirely different from the sale of liquor, yet as to the power of the Government and the right of the Government when it admits a State to impose conditions with regard to what laws the new State shall or shall not pass, I do not think there is any distinction.

Here we require that the—

convention shall provide, by ordinance irrevocable without the consent of the United States and the people of said State—

First. That perfect toleration of religious sentiment shall be secured, and that no inhabitant of said State shall ever be molested in person or property on account of his or her mode of religious worship, and that polygamous or plural marriages and the sale, barter, or giving of intoxicating liquors to Indians, are forever prohibited.

They shall agree to that. Then the people inhabiting the proposed State shall—

declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. * * * That no taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use.

* * * * * * *

That provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of said State and free from sectarian control; and said schools shall always be conducted in English: *Provided*, That this act shall not preclude the teaching of other languages in said public schools.

That said State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.

Those are the conditions upon which the United States will admit this Territory as a State, and I see no objection on legal grounds, therefore, to requiring that they shall pass laws prohibiting the sale of intoxicating liquors. The necessity of those laws, compared with laws prohibiting polygamy, is another question.

The point on which I rose to speak when last up was this: The Senator from Texas suggested that the United States had no remedy if the State did not keep its agreement, which was made a condition of its admission, and suggested that the only way the United States had of enforcing such an agreement would be to refuse to the State representation in the Senate and House of Representatives.

Mr. President, this question has always been a difficult one, and I think the best lawyers have not seen any way in which

the United States can enforce such an agreement made with a State when it adopts its constitution as a condition of admission. If a State deliberately breaks its promise, deliberately violates its compact, and does those things which it said it would not do, or does not do the things which it said it would do, my judgment is that the United States is absolutely without remedy. I do not believe it furnishes a sufficient ground for the exclusion of representation of such a State. There is a difference of opinion about that, perhaps. You can not turn the State out of the Union because it violates its compact, and if you can not do that and are obliged to allow it to remain in the Union, it must remain as other States in the Union, with all the rights and powers and privileges which the other States have.

Mr. BAILEY. If the Senator from Connecticut is on the Committee on Territories, I should like to ask him, and if he is not, I will ask the Senator from Minnesota, who is on the committee, why it was deemed necessary to provide that the new State shall never discriminate against anybody in its suffrage laws on account of race, color, or previous condition of servitude? Were they afraid that the fifteenth amendment would not apply there without that special provision?

Mr. NELSON. That provision came to us in the bill as it came from the House, and inasmuch as it is a provision of the Constitution it certainly can not be harmful.

Mr. BAILEY. No.

Mr. NELSON. The most the Senator could urge against it is that it is surplusage.

Mr. BAILEY. It is, and it is a little hard to be reenacting——

Mr. NELSON. I trust the Senator from Texas will not be too hypercritical in this matter. There ought to be a limit to criticism.

Mr. BAILEY. I was really wondering if the committee had some reason except simply an abundant caution, though I do protest against reenacting in an unnecessary way the Constitution in one section and violating our whole theory of Government in the very next section. I think the Constitution could well be left out of the statute, and I believe in making every act, even an enabling act, as short as is consistent with clearness.

It does look to me as if it is useless to provide that the new State shall not discriminate against anybody on account of race, color, or previous condition of servitude. That much I grant it is the right of Congress to say. I will say that if any State were to present a constitution which permitted a discrimination on account of race, color, or previous condition, I should be constrained, under my oath, to vote against the admission of the State, because its constitution would be contrary to the Constitution of the United States. But it seems to me that that proposition might be reversed, and that Congress has no right to require a sovereign State to come to this body seeking admission upon terms that are wholly repugnant to the Constitution. In other words, I maintain that the legislature of that State, unless restrained voluntarily by its own constitution, should have the right, at its very first session, to deal with every police regulation which concerns the happiness of its people, and that whether or not they deal wisely with police regulations is a question for them and not for Congress.

Mr. NELSON. The provision to which the Senator from Texas refers was in the bill as it came from the House, with another addition, which we eliminated. This provision, being exactly in conformity with the Constitution, simply amounts to this: We ask the State to reaffirm expressly in its constitution its allegiance to this constitutional amendment. It will not do to be too critical in these matters. It might have been in one sense neater, perhaps, and it might have shortened the bill to have left out that paragraph, but it certainly can do no harm to ask the new State in this form, "Do you believe in this paragraph of the Constitution?"—and that is all it amounts to.

Mr. President, there were some other portions of the argument of the Senator from Idaho, as well as a portion of the argument of the Senator from Georgia, to which I intended briefly to reply when I rose, but the hour is now very late, and therefore if no one else desires to speak I move an executive session, and will make my reply on a subsequent day.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Minnesota, that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business. After twelve minutes spent in executive session the doors were reopened, and (at 4 o'clock and 40 minutes p. m.) the Senate adjourned until to-morrow, Thursday, January 19, 1905, at 12 o'clock meridian.

NOMINATIONS.

Executive nominations received by the Senate January 18, 1905.

INDIAN AGENTS.

I. N. Steen, of Mayville, N. Dak., to be agent for the Indians of the Standing Rock Agency in North Dakota, vice John M. Carignan, resigned.

John R. Brennan, of South Dakota, to be agent for the Indians of the Pine Ridge Agency in South Dakota, his term having expired December 14, 1904. (Reappointment.)

RECEIVER OF PUBLIC MONEYS.

William A. McClure, of Taylor, N. Dak., to be receiver of public moneys at Dickinson, N. Dak., vice Leslie A. Simpson, resigned.

PROMOTION IN THE NAVY.

Lieut. (Junior Grade) John A. Schofield to be a lieutenant in the Navy from the 17th day of June, 1904, vice Lieut. Albert C. Dieffenbach, promoted.

APPOINTMENTS IN THE NAVY.

John H. Blue and Thomas G. Foster, jr., citizens of New York and Alabama, respectively, to be assistant surgeons in the Navy from the 16th day of January, 1905, to fill vacancies existing in that grade on that date.

POSTMASTERS.

ARKANSAS.

B. W. Allen to be postmaster at Hamburg, in the county of Ashley and State of Arkansas, in place of Albert W. Coulter. Incumbent's commission expires January 31, 1905.

Edward E. Blackmon to be postmaster at Augusta, in the county of Woodruff and State of Arkansas, in place of Edward E. Blackmon. Incumbent's commission expires January 31, 1905.

CALIFORNIA.

John E. Hoyle to be postmaster at Taylor, in the county of Shasta and State of California, in place of John E. Hoyle. Incumbent's commission expires January 31, 1905.

Flora S. Knauer to be postmaster at Reedley, in the county of Fresno and State of California. Office became Presidential January 1, 1905.

FLORIDA.

Daniel T. Carlton to be postmaster at Arcadia, in the county of De Soto and State of Florida, in place of Daniel T. Carlton. Incumbent's commission expires January 31, 1905.

GEORGIA.

Jennie B. Smith to be postmaster at Carrollton, in the county of Carroll and State of Georgia, in place of Jennie B. Smith. Incumbent's commission expired December 19, 1903.

INDIANA.

Louis T. Bell to be postmaster at Flora, in the county of Carroll and State of Indiana, in place of Louis T. Bell. Incumbent's commission expires January 31, 1905.

Lucius L. Camplin to be postmaster at Shirley, in the county of Hancock and State of Indiana. Office became Presidential October 1, 1904.

Howard H. Newby to be postmaster at Sheridan, in the county of Hamilton and State of Indiana, in place of Howard H. Newby. Incumbent's commission expired December 10, 1904.

John R. Nordyke to be postmaster at Wolcott, in the county of White and State of Indiana, in place of William E. Fox. Incumbent's commission expires January 31, 1905.

Charles R. Swaim to be postmaster at Knightstown, in the county of Henry and State of Indiana, in place of John W. Lowry. Incumbent's commission expired December 20, 1904.

INDIAN TERRITORY.

Harry J. Jennings to be postmaster at Claremore, in District Four, Ind. T., in place of Elmer S. Bessey, resigned.

IOWA.

Levi M. Black to be postmaster at Ireton, in the county of Sioux and State of Iowa, in place of Spencer H. Carr, removed.

KENTUCKY.

J. L. Earlywine to be postmaster at Paris, in the county of Bourbon and State of Kentucky, in place of John S. Sweeney. Incumbent's commission expires January 31, 1905.

MAINE.

Charles H. Eastman to be postmaster at Millinocket, in the county of Penobscot and State of Maine, in place of Charles H. Eastman. Incumbent's commission expires January 31, 1905.

MARYLAND.

Alfred Sigler to be postmaster at Ridgely, in the county of Caroline and State of Maryland. Office became Presidential January 1, 1905.

MASSACHUSETTS.

George A. Birnie to be postmaster at Ludlow, in the county of Hampden and State of Massachusetts, in place of George A. Birnie. Incumbent's commission expires January 31, 1905.

MINNESOTA.

William J. Annon to be postmaster at Anoka, in the county of Anoka and State of Minnesota, in place of Irving A. Caswell. Incumbent's commission expires January 31, 1905.

Aaron R. Butler to be postmaster at Bagley, in the county of Clearwater and State of Minnesota. Office became Presidential January 1, 1905.

John P. Lundin to be postmaster at Stephen, in the county of Marshall and State of Minnesota, in place of John R. Walters. Incumbent's commission expires January 31, 1905.

William H. Smith to be postmaster at Cambridge, in the county of Isanti and State of Minnesota, in place of William H. Smith. Incumbent's commission expires January 31, 1905.

Charles S. Strobeck to be postmaster at Litchfield, in the county of Meeker and State of Minnesota, in place of Wellington De V. Joubert. Incumbent's commission expires January 31, 1905.

MISSOURI.

Warren W. Parish to be postmaster at Adrian, in the county of Bates and State of Missouri, in place of Elizabeth C. Cox. Incumbent's commission expires January 31, 1905.

William M. Tygart to be postmaster at South St. Joseph, in the county of Buchanan and State of Missouri, in place of John M. Armstrong, deceased.

Grace Lamont to be postmaster at Dillon, in the county of Beaverhead and State of Montana, in place of Grace Lamont. Incumbent's commission expires January 31, 1905.

NEBRASKA.

George Williams to be postmaster at Cambridge, in the county of Furnas and State of Nebraska, in place of George Williams. Incumbent's commission expires January 31, 1905.

NEW HAMPSHIRE.

Arthur W. Charles to be postmaster at North Conway, in the county of Carroll and State of New Hampshire, in place of Charles H. Whitaker, deceased.

NEW JERSEY.

John J. Anderson to be postmaster at Hackensack, in the county of Bergen and State of New Jersey, in place of John J. Anderson. Incumbent's commission expired May 28, 1904.

Ezra F. Ferris, sr., to be postmaster at Chatham, in the county of Morris and State of New Jersey, in place of Ezra F. Ferris, sr. Incumbent's commission expires January 31, 1905.

Henry Graham to be postmaster at Bridgeton, in the county of Cumberland and State of New Jersey, in place of Henry Graham. Incumbent's commission expires January 31, 1905.

William H. Jernee to be postmaster at Jamesburg, in the county of Middlesex and State of New Jersey, in place of William H. Jernee. Incumbent's commission expired January 16, 1905.

Howard V. Locke to be postmaster at Swedesboro, in the county of Gloucester and State of New Jersey, in place of Howard V. Locke. Incumbent's commission expires January 31, 1905.

NEW YORK.

Charles W. Clark to be postmaster at Oriskany Falls, in the county of Oneida and State of New York, in place of Charles W. Clark. Incumbent's commission expires January 31, 1905.

Frantz Murray to be postmaster at Dolgeville, in the county of Herkimer and State of New York, in place of Frantz Murray. Incumbent's commission expires January 31, 1905.

Ernest J. Robinson to be postmaster at Plattsburg, in the county of Clinton and State of New York, in place of Ernest J. Robinson. Incumbent's commission expires January 31, 1905.

OHIO.

Orrin W. Curtis to be postmaster at Swanton, in the county of Fulton and State of Ohio, in place of Orrin W. Curtis. Incumbent's commission expires January 31, 1905.

Thomas E. Dunnington to be postmaster at Malta, in the county of Morgan and State of Ohio, in place of Thomas E. Dunnington. Incumbent's commission expires January 31, 1905.

George E. Reed to be postmaster at Prairie Depot, in the county of Wood and State of Ohio, in place of George E. Reed. Incumbent's commission expires January 31, 1905.

OREGON.

Harrison Kelly to be postmaster at Burns, in the county of Harney and State of Oregon, in place of Edward B. Waters. Incumbent's commission expired May 28, 1904.

PENNSYLVANIA.

Scott Bancroft to be postmaster at Shinglehouse, in the county of Potter and State of Pennsylvania. Office became Presidential January 1, 1905.

Frank A. Howe to be postmaster at Waterford, in the county of Erie and State of Pennsylvania, in place of Frank A. Howe. Incumbent's commission expires January 31, 1905.

Robert A. Todd to be postmaster at Ellwood City, in the county of Lawrence and State of Pennsylvania, in place of Robert A. Todd. Incumbent's commission expires January 31, 1905.

SOUTH DAKOTA.

Arthur B. Chubbuck to be postmaster at Ipswich, in the county of Edmunds and State of South Dakota, in place of Arthur B. Chubbuck. Incumbent's commission expires January 31, 1905.

TENNESSEE.

Joseph C. Hale to be postmaster at Winchester, in the county of Franklin and State of Tennessee, in place of Joseph C. Hale. Incumbent's commission expires January 31, 1905.

Joseph J. Losier to be postmaster at Jackson, in the county of Madison and State of Tennessee, in place of Felix R. Bray, removed.

WEST VIRGINIA.

Ellis L. Cassell to be postmaster at Eckman, in the county of McDowell and State of West Virginia. Office became Presidential January 1, 1905.

WISCONSIN.

Oliver W. Babcock to be postmaster at Omro, in the county of Winnebago and State of Wisconsin, in place of Oliver W. Babcock. Incumbent's commission expires January 31, 1905.

Charles S. Button to be postmaster at Milton Junction, in the county of Rock and State of Wisconsin, in place of Charles S. Button. Incumbent's commission expires January 31, 1905.

Martin A. Lien to be postmaster at Black River Falls, in the county of Jackson and State of Wisconsin, in place of Martin A. Lien. Incumbent's commission expires January 31, 1905.

Irwin R. Nye to be postmaster at Wittenberg, in the county of Shawano and State of Wisconsin, in place of Irwin R. Nye. Incumbent's commission expired December 10, 1904.

John C. Southworth to be postmaster at Whitehall, in the county of Trempealeau and State of Wisconsin, in place of John C. Southworth. Incumbent's commission expires January 31, 1905.

WITHDRAWAL.

Executive nomination withdrawn from the Senate January 18, 1905.

Edward B. Waters to be postmaster at Burns, in the State of Oregon.

CONFIRMATIONS.

Executive nominations confirmed by the Senate January 18, 1905.

MARSHAL.

Frank M. Chandler, of Ohio, to be United States marshal for the northern district of Ohio.

PROMOTION IN THE MARINE CORPS.

Maj. Henry C. Haines, assistant adjutant and inspector, United States Marine Corps, to be assistant adjutant and inspector in the Marine Corps, with the rank of lieutenant-colonel, from the 15th day of December, 1904.

PROMOTIONS IN THE NAVY.

Lieut. (Junior Grade) Farmer Morrison to be a lieutenant in the Navy from the 1st day of January, 1905.

Commander William W. Kimball to be a captain in the Navy from the 12th day of January, 1905.

Lieut. George F. Cooper to be a lieutenant-commander in the Navy from the 12th day of January, 1905.

SURVEYOR-GENERAL OF LOUISIANA.

James Lewis, of Louisiana, to be surveyor-general of Louisiana.

POSTMASTERS.

ARKANSAS.

Joseph A. Foster to be postmaster at Paris, in the county of Logan and State of Arkansas.

Charles H. Tisdale to be postmaster at Hazen, in the county of Prairie and State of Arkansas.

M. P. Westbrook to be postmaster at Benton, in the county of Saline and State of Arkansas.

INDIAN TERRITORY.

William T. Brooks to be postmaster at Broken Arrow, in District 7, Ind. T.

John P. Bradley to be postmaster at Wetumka, in District 13, Ind. T.

ILLINOIS.

Alpheus K. Campbell to be postmaster at Sullivan, in the county of Moultrie and State of Illinois.

MINNESOTA.

John P. Lundin to be postmaster at Stephen, Minn.

TREATIES WITH INDIANS IN CALIFORNIA.

The injunction of secrecy was removed January 18, 1905, from the eighteen treaties with Indian tribes in California, sent to the Senate by President Fillmore June 7, 1852.

HOUSE OF REPRESENTATIVES.

WEDNESDAY, *January 18, 1905.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE.

A message from the Senate, by Mr. PARKINSON, its reading clerk, announced that the Senate had passed without amendment bill of the following title:

H. R. 16992. An act to authorize the county of Sunflower to construct a bridge across the Sunflower River, Mississippi.

The message also announced that the Senate had passed bills of the following titles; in which the concurrence of the House of Representatives was requested:

S. 3168. An act making an appropriation for the improvement of the grounds within the Presidio Military Reservation at San Francisco, Cal.;

S. 2654. An act to amend chapter 55 of an act entitled "An act to establish a code of law for the District of Columbia;

S. 1422. An act for the relief of the Omaha National Bank;

S. 1456. An act to carry out the findings of the Court of Claims in the case of James H. Dennis;

S. 5209. An act for the relief of Edward H. Ozmun;

S. 4306. An act relating to the competency of witnesses in the United States courts;

S. 4196. An act to provide for the distribution of the reports of the United States circuit courts of appeals and of the United States circuit and district courts to certain officers of the United States, and for other purposes;

S. 4162. An act providing for the appointment of a solicitor for the Post-Office Department and abolishing the office of Assistant Attorney-General for the Post-Office Department; and

S. 3532. An act to provide for the payment of certain claims against the District of Columbia in accordance with the acts of Congress approved January 26, 1897, and as amended July 19, 1897.

The message also announced that the Senate had passed with amendment bill of the following title; in which the concurrence of the House of Representatives was requested:

H. R. 8460. An act providing for the transfer of forest reserves from the Department of the Interior to the Department of Agriculture.

ENROLLED BILLS SIGNED.

Mr. WACHTER, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bills of the following titles; when the Speaker signed the same:

H. R. 15225. An act to amend the act relating to the printing and distribution of public documents, and for other purposes; and

H. R. 16720. An act permitting the building of a railroad bridge across the Red River of the North from a point on section 6, township 154 north, range 50 west, Marshall County, Minn., to a point on section 36, township 155 north, range 51 west, Walsh County, N. Dak.

IMPEACHMENT OF JUDGE CHARLES SWAYNE.

Mr. PALMER. Will the gentleman from California use some of his time now?

Mr. GILLETT of California. Mr. Speaker, I yield seven minutes to the gentleman from Massachusetts [Mr. MCCALL].

Mr. MCCALL. Mr. Speaker, I have listened to most of the very able arguments that have been made in this proceeding, and without assuming to have read the entire record I will give some impressions that I have received concerning the case. The gentleman from New York [Mr. COCKRAN] yesterday very eloquently presented to the House a noble ideal of a judge, an ideal that was as unattainable as it was sublime. If we were to impeach all judges who do not attain to it and impeach them at once, I do not think we should have a single judge upon the bench at the end of the week. I am not sure we want just that sort of judge, because I think it would give us the régime of an intellectual and moral monster, under whom mankind would be crucified, and we would soon long for a judge with some taint of the frailties of poor humanity upon him. I am unable to accept the contention of the gentleman from Pennsylvania, presented in the very full argument in which he introduced the resolution, before the holidays, as to the character of an impeachable offense. The gentleman (and I have since read his speech as reported) said in substance that we either commended Judge Swayne or we did not commend him. If we believed that what he had done was right, we should send him forth with our approbation, but if we did not so believe, then we should send him to the constitutional trier—to the Senate. I do not think, sir, that the process of impeachment is any such light affair. The Constitution gives to this House the power to impeach public officers for treason, felony, and other high crimes and misdemeanors. Noscitur a sociis. A crime is known by the company it keeps, and whether the other "high crimes and misdemeanors" must be indictable offenses per se or not, it is evident that the framers of the Constitution, in associating them with treason and felony, contemplated very grave offenses against society. Now, as to the specific charges.

Mr. WILLIAMS of Mississippi. Will the gentleman yield for a question?

Mr. MCCALL. I have only seven minutes.

Mr. WILLIAMS of Mississippi. Then it is not reasonable to expect you to yield?

Mr. MCCALL. I shall be very glad to submit to the gentleman's question.

Mr. WILLIAMS of Mississippi. No; I would rather not under those circumstances.

Mr. MCCALL. The article based upon the false certificates of expenses, I think, was completely destroyed by the gentleman from New York [Mr. COCKRAN] in the argument which he made yesterday, which imparted a temporary appearance of dignity to this case, a dignity which speedily disappears the moment one looks into the record. The first charge I will consider is the railroad charge. It is alleged that this judge accepted free transportation and free subsistence while being transported, from the receiver of a railroad, which receiver had been appointed by him. The gentleman from Maine [Mr. LITTLEFIELD] estimates the cost to the railroad at twenty or thirty dollars, or some similar small amount. It seems to me that this charge should be reverenced, if for no other reason than because of its antiquity. This offense occurred some dozen years ago, at a time when I think it was quite the custom for public officers to receive what are euphemistically called "favors" at the hands of railroad corporations. I am willing to assert, however, that if the rule were applied, even in these virtuous times, that a public officer having authority either to make or execute laws against railroad corporations should be adjudged as having committed a high crime and misdemeanor because he accepted a favor from a railroad, then that rule would cause an amount of mortality among our contemporary statesmen which it is frightful to contemplate. [Laughter and applause.]

The exhuming of this indiscreet act of Judge Swayne after the dust of a dozen years has gathered upon it, this act which I believe was a thoughtless act, but which it is not alleged caused any injury to anyone or corrupted him in any way—I say that the exhuming of this offense at this late day is not so much a witness for his impeachment as it is to the diligence of the hostility with which he had been pursued.

Now, as to the contempt charges and his action in the contempt cases. It appears that he had been negotiating for the purchase of a piece of land in Florida for his wife. A deed was sent to him or tendered him for that land. He noticed that it was a quitclaim deed instead of a warranty, and he asked the question: Why is not this a warranty deed? They then told him that it was because of a cloud in the title which was being tried in his court, and he at once ordered the deed to be returned, and the transaction, so far as he was concerned, was terminated and was never taken up again. A motion was made that he should "recuse" himself on the ground that he had an interest in the land. As a matter of fact, he could not declare that he had the remotest interest in it. He decided that question presented to him judicially on the ground that he did not

have an interest in the land and could not recuse himself, and it can not be doubted that he decided it in accordance with the fact.

The SPEAKER. The time of the gentleman from Massachusetts [Mr. McCALL] has expired.

Mr. GILLETT of California. I yield three minutes more to the gentleman from Massachusetts [Mr. McCALL].

Mr. McCALL. The lawyers who made the motion then brought suit against him, as if he were the owner of the land or claimed title to it. They caused a publication to be made in a newspaper. The evident purpose of the whole proceeding was to coerce the judge, when the matter was called up again, into recusing himself. I regard that, Mr. Speaker, as a very grave contempt, and I do not believe that it can receive the approbation of the Florida bar.

A poor man may be in court with the title to his home in controversy, and if a great and rich antagonist is to be permitted to coerce the court, to bring a groundless suit against the judge and to publish defamatory articles against him, then justice will become a mere byword. In the other offense case an attempt was made to assassinate an officer of the court because of the way he attempted to perform an official duty. These offenses were not committed against Charles Swayne, but they were committed against the very majesty of the law, and if such offenses were permited to go unpunished they would paralyze the arm of justice.

We have heard very eloquent declamations here about liberty, a name that is always sweet to our ears. Those declamations are made because these offenders were sent to jail. But the kind of liberty, sir, that this Government stands for is liberty under law. The kind of liberty that is declaimed about here is liberty to the assassins of the law. If our courts shall not enforce their processes, shall not protect their officers from assassination, and shall not protect themselves from insult, then the liberty for which this Government stands will cease to exist, and with the falling of that the Government itself will fall, and it ought to fall.

I have no difficulty, sir, in reaching the conclusion that I shall vote against all these articles of impeachment. As to the House being put in a false position, I will say that I do not think that it should pursue an evil course simply because it has once started upon it. We were hurried into the passing of the resolution some three or four weeks ago under the spur of the previous question; and if we decide to prosecute this case no longer we can still retire with dignity; we can send a resolution to the Senate that after further consideration we have decided to prosecute the case no further and that the charge which we have presented can not be maintained by the evidence into which we have investigated. [Applause.]

Mr. COCKRAN of New York. Will the gentleman allow me a question?

Mr. GILLETT of California. I am not inclined to yield any more time to the gentleman from New York [Mr. COCKRAN].

Mr. PALMER. I will yield to the gentleman from New York [Mr. COCKRAN].

The SPEAKER. How much time does the gentleman from Pennsylvania [Mr. PALMER] yield?

Mr. PALMER. I yield a minute in which to ask a question and a minute in which to answer it.

Mr. COCKRAN of New York. I understood the gentleman from Massachusetts [Mr. McCALL] to say that he did not approve of the conduct of Judge Swayne in using personal property that was in his possession for the benefit of the creditors, but that the offense was so general that if we pursued it here it might become a little awkward for ourselves.

Mr. McCALL. The gentleman does not quite state my position correctly. I do not approve the action of Judge Swayne in accepting such a favor from a railroad corporation over which he had jurisdiction, but I think it altogether too trivial and too ancient for us to-day to declare it a high crime and misdemeanor.

Mr. COCKRAN of New York. I wanted to suggest to the gentleman from Massachusetts that the impression on my mind was that the act itself being reprehensible we ought not to pursue it because it was general. I want to suggest to the gentleman whether the universality of that thing ought not to be the best reason for attempting to correct it, one to be prosecuted on the first conspicuous example that came to our notice.

Mr. PALMER. I yield three minutes to the gentleman from Mississippi [Mr. WILLIAMS].

Mr. WILLIAMS of Mississippi. Mr. Speaker, in that three minutes I want to say just one thing. I always listen with very much pleasure to any argument made by the gentleman from Massachusetts. He is always evidently so sincere and so thoroughly possessed of intellectual integrity that every word he utters goes a long way with me. The fallacy of the gentleman's argument a moment ago, however, consists in this: That he places upon the same ground exactly an impeachable offense committed by an executive or legislative officer and one committed by a nonjudicial officer. He forgets that while there is but one clause of the Constitution that applies to executive and other officers nonjudicial, there are two that apply to the judiciary. The ordinary constitutional provision for impeachment is applicable to both, and comprehends "treasons, felonies, and other high crimes and misdemeanors." There is another clause of the Constitution which refers to the removal by impeachment of judicial officers. When you come to the consideration of the impeachment of a judicial officer, there is another clause of the Constitution equally applicable, and that is the clause which fixes the tenure by which he holds his office. The judges shall hold their office "during good behavior;" eo converso—they shall not hold their office after bad behavior as judges. Impeachment is the method of determining as to them not only their guilt or innocence of "treason, felony, or other high crimes or misdemeanor," but whether their behavior as judges is good. A judge is impeachable therefore for bad behavior as a judge, because that is a noncompliance with the constitutional condition of his tenure, and he stands in a two-fold attitude to the Constitution so far as relationship to impeachment proceedings is concerned. I merely wanted to express that thought.

Mr. PALMER. I yield thirty minutes to the gentleman from Texas.

Mr. HENRY of Texas. Mr. Speaker, this interesting and memorable proceeding will soon be terminated. In view of the able and exhaustive addresses that have been delivered I can not hope to interest my auditors, but I shall at least endeavor to be just in discussing the propositions involved. So thorough has been the discussion on the law and evidence, a barren harvest is left for me to glean. Three points, however, shall receive my attention during the brief time allotted me. It is regrettable that the distinguished gentleman from Ohio [Mr. GROSVENOR] on yesterday undertook to drag partisan politics into these solemn proceedings. This impeachment trial, above all others, should be tried according to law and evidence. Partisan debate should be deplored by all Members respecting their oaths of office when grave matters like these are to be determined. There was an intimation of prejudice on the part of gentlemen over there. Surely on a great question like this we can divest ourselves of feelings of partiality and prejudice. For the judiciary of my country I have the profoundest regard. The office is exalted and should ever command the highest respect of every citizen. In the formation of our Government there was much diversity of opinion about the tenure of office, but it was fixed during "good behavior" by the provisions of the Constitution. When that "good behavior" required of a Federal judge ceases he should be removed from office, no matter whether he resides North or South in this Republic.

Debate it as we may, there is only one remedy for removing an unfit Federal judge—impeachment before the Senate on charges preferred by this body as representatives of the people. Mr. Jefferson always dreaded the encroachments and powers of Federal judges, and warned the people to jealously guard their acts and hold them to strict accountability. He deplored life tenure of office and eloquently declared against it. He foresaw the tardy movement of impeachment and denounced that remedy as the mere "scarecrow of the Constitution." Still, the Constitution remains unamended. We have Federal judges in office for practically life tenure, and impeachment is the only remedy for their removal when they misbehave.

With the system we must for the present be content, but let us hold the judges to strict accountability for their good behavior. I do not believe the power of impeachment the mere "scarecrow of the Constitution" where a judge has so flagrantly misbehaved as proved against Judge Swayne. This House will rise to the occasion, shut its eyes to pleas of sectionalism, and relieve the good people of Florida of a judicial tyrant who has ground some of her best citizens to the earth.

It is not necessary or usual, Mr. Speaker, for a Federal judge to become odious before the people of his district or State because, forsooth, his politics do not accord with theirs. His legitimate functions are to mete out law, justice, and equity, not politics.

In my State we have four Federal district judges, one a Democrat, the other three lifelong Republicans. These men are respected by the bar and people of Texas. It gives me pleasure to testify here now before this assemblage that no stain of dishonor has ever attached to their names. They stand high up in the judicial ranks in Texas and throughout the country where they are known, and I to-day congratulate my people on their ability, eminence, and honorable judicial conduct. One, hailing

from the great State of Iowa, had only been in the confines of Texas a brief period when the lamented McKinley elevated him to the bench, and so good was his behavior that he at once sprang into popularity with the legal profession and the people of Texas. The same estimate may be placed upon the Democrat and the other two Republicans, who have lived honorable careers in Texas for many years. An upright judiciary is surely one of the greatest blessings to be enjoyed by a free people. Bacon wisely said:

The place of justice is an hallowed place; and therefore not only the bench, but the foot place and precincts and purprise thereof, ought to be preserved against scandal and corruption.

When it ceases to be such a refuge, the people suffer.

In the enthusiasm on yesterday we drifted somewhat from the law and facts. Let us cast aside prejudice, repudiate blind partisanship, and try this case as become representatives of free people in a great Republic. This cause should not be tried here as it will be in the Senate. There proof of guilt must be made beyond reasonable doubt. Here it must only be such as induces a rational belief of the guilt of the accused. Such is the rule of law as laid down by accepted authorities.

More than ten years ago, by a unanimous vote, the Florida legislature, in August, 1893, passed a resolution denouncing Judge Swayne as a "corrupt judge" and one "susceptible to corrupt influences," and memorialized Congress to investigate his conduct with a view to impeachment. In the short period of three years as a judge he had so demeaned himself in Florida that all the State senators and representatives concurred in denouncing him as being "corrupt" and "subject to corrupt influences." But the power of impeachment is tremendous, and moves with halting step. It was not inaugurated, but permitted to sleep here before some committee. After more than ten years have elapsed the long-suffering people of that State again appeal to this body for investigation and impeachment. Your Judiciary Committee have given the complaint thorough investigation, and report unanimously against Judge Swayne. The hearing was not ex parte; it was complete and fair, and the respondent had process at the expense of the Government to bring his witnesses here for his defense. The Committee on the Judiciary have set forth impeachable grounds in twelve specifications, and it is to be regretted, in my judgment, that they did not include one more. The evidence contained in this record undeniably shows that Judge Swayne could fairly be impeached for his conduct in the Hoskins bankruptcy proceedings. In my discussion to-day I shall confine myself to three propositions, to wit, the question of nonresidence, the contempt proceedings against Belden and Davis, and the contempt proceedings against W. C. O'Neal.

The specifications as to nonresidence read as follows:

ART. 6. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment, and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district. That subsequently, by an act of Congress approved on the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine and contiguous territory were transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida and to comply with the five hundred and fifty-first section of the Revised Statutes of the United States, which provides that "a district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless the said Charles Swayne, judge as aforesaid, did not acquire a residence, and did not, within the intent and meaning of said act, reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of October, A. D. 1900, a period of about six years.

Wherefore the said Charles Swayne, judge, as aforesaid, willfully and knowingly violated the aforesaid law and was and is guilty of a high misdemeanor in office.

ART. 7. That the said Charles Swayne, having been duly appointed and confirmed, was commissioned a district judge of the United States in and for the northern district of Florida on the 1st day of April, A. D. 1890, to serve during good behavior, and thereafter, to wit, on the 22d day of April, A. D. 1890, took the oath of office and assumed the duties of his appointment and established his residence at the city of St. Augustine, in the State of Florida, which was at that time within the said northern district; that subsequently, by an act of Congress of the United States, approved the 23d day of July, A. D. 1894, the boundaries of the said northern district of Florida were changed, and the city of St. Augustine, with the contiguous territory, was transferred to the southern district of Florida, whereupon it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district of Florida, as defined by said act of Congress, and to comply with section 551 of the Revised Statutes of the United States, which provides that "a district judge shall be appointed for each district, except in cases hereinafter provided. Every judge shall reside in the district for which he is appointed, and for offending against this provision shall be deemed guilty of a high misdemeanor."

Nevertheless the said Charles Swayne, judge as aforesaid, totally disregarding his duty as aforesaid, did not acquire a residence, and within the intent and meaning of said act did not reside in his said district, to wit, the northern district of Florida, from the 23d day of July, A. D. 1894, to the 1st day of January, A. D. 1903, a period of about nine years.

Wherefore, the said Charles Swayne, judge as aforesaid, willfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office.

As is well remembered, Judge Swayne lived at St. Augustine, Fla., when the lines of his district were changed in the year 1894, and he lived outside of the northern district of Florida, for which district he had been appointed to act as judge, until very recently, when charges against him originated. Under an express statute recited in these specifications it became his duty to remove into his district and reside therein while judge. But, mark you, he did not wish to remove and did not intend to remove, and he did not remove his residence into the northern district of Florida until within the last year, since impeachment proceedings were inaugurated against him. In his statement before the Judiciary Committee he said: "After a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor my family, saying that the next Congress would be Republican and the district would be placed back in its usual form." This solemn admission before the committee evidences the complete intent on his part to remain out of the northern district of Florida, and it sheds light on the true inwardness of his feelings and desires, and by this declaration his subsequent acts must be construed.

The district was never changed by Congress after 1894, as he and his friends believed and prophesied would be the case. His family never removed into the district, but remained in the State of Delaware. Permit me to submit here the evidence of witnesses on the question of residence. It proves conclusively that the intentions and acts of Judge Swayne were a violation of the statute quoted. Where such a statute has been violated there is no legal excuse that can be pleaded by the judge. He is guilty of a high misdemeanor and should be removed from office. C. H. Laney, an attorney in the State of Florida, testified that he had made trips to Guyencourt, Del., and that he found out while there that Judge Swayne periodically visited there and spent almost his entire summers there. He swore that Judge Swayne had nominally a home there, a furnished house, and that he has a place there called his place, at which he stays. The place, he testifies, is at Guyencourt, Del., a small hamlet, with a railroad station and post-office, about 8 miles north of Wilmington.

On the question of inconvenience to litigants, Judge W. A. Blount testified that "Judge Swayne's absence from the district had resulted in inconvenience, and that the question as to whether it had resulted in detriment would depend upon whether matters could be decided as well upon written as upon oral argument, and whether certain matters ought to be decided ex parte instead of inter partes." C. M. Coston, an attorney of Florida, swore that "the length of time in each year which Judge Swayne spent in the district consisted of the time which it required him to go there, hold his term of court, and go away, usually from two to five weeks."

Judge A. C. Blount, jr., testified that he had learned from Judge Swayne and others that the Judge had a home at Guyencourt, Del. He swore that he and Judge Swayne had been on pretty friendly terms and that he sometimes held conversations with the Judge, during the course of which the Judge had spoken of his place at Guyencourt, Del., his horses, etc.

J. C. Keyser testified that "Judge Swayne was never in Pensacola, Fla., except during terms of his court, shortly before and shortly after, and that he boarded while he was there."

W. H. Northrup testified that "Judge Swayne stopped at his house during the time he was holding court in Pensacola and that he had heard Judge Swayne speak of his old homestead at Guyencourt, Del." He also testified that "he had heard Judge Swayne say that he would come to Florida, but he had never heard him say that he intended making his home there."

George P. Wentworth testified "that Judge Swayne occupied the Simmons residence, and that his family came to Florida while court was being held and then went back to his place at Guyencourt, Del."

J. E. Wolfe, who had been United States district attorney and assistant United States district attorney, swore that "it was generally understood that Judge Swayne had a home in Guyencourt, Del., where he resided when he was not required to be in Florida at terms of court, and that when court adjourned he would go away." He testified that "Judge Swayne rented a residence for a few months, and that he boarded for some time with Captain Northrup, in Pensacola." He swore that "Judge Swayne would usually arrive a day or two before court met, remain until the business of the court was disposed of and go away," and that "the Judge usually held three terms of court in the

district per annum, each term of from ten days to two weeks' duration."

Judge Swayne testified that he had not been a registered voter in fourteen years, and that he had not paid his poll tax in Florida or qualified himself to vote. Out of three hundred and sixty-five days in each year for the last ten years he has spent in all only about sixty days in his district while actually holding court. He has maintained his family in Delaware. The only evidence tending to show that he attempted in the slightest degree to obtain a residence in the northern district of Florida is some excuse offered by his clerk, Mr. Marsh, and his friend, Captain Northup, claiming that he was trying to secure a home in the district on one or two occasions for the purpose of bringing his family there. Both of these witnesses state that he never secured the home.

More than ten years ago the people of Florida, through their legislature, denounced him as being a corrupt judge and susceptible to corrupt influences. He has never forgiven the legislature or the people of that State for their action. He has lorded it over them and has been determined to show these people that he would not reside amongst them permanently and obey the mandates of the statute requiring him to reside in his district. His acts have been the very plainest violation of the statute, and on all occasions he has manifested his contempt and scorn for the people of that State.

For my part, I have no doubt that Judge Swayne never intended to remove into the new district as fixed by the act of Congress in 1894, and the evidence will convince any fair-minded man who will read it that he has never actually acquired a residence there until the Florida legislature forced him to do so by beginning these proceedings. There should be no hesitancy on the part of any Member of Congress to remove him from office on these specifications. The day of reckoning for this judge has come. He has defied the people and their laws long enough. For my part, I shall not shut my eyes to his flagrant violation of the plain statute, but when the hour comes shall pronounce judgment against him on this specification and send him to the high court of impeachment, where the Senate will strip the judicial ermine from him and place it upon worthy shoulders of an honorable successor.

The next points claiming my attention will be the Davis and Belden and O'Neal contempt cases. Those specifications read as follows:

ART. 8. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge, as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 9. That the said Charles Swayne having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days E. T. Davis, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 10. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a judge of a circuit court of the United States, heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did maliciously and unlawfully adjudge guilty of a contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States.

Wherefore, the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office.

ART. 11. That the said Charles Swayne, having been appointed, confirmed, and duly commissioned as judge of the district court of the United States in and for the northern district of Florida, entered upon the duties of said office, and while in the exercise of his office as judge as aforesaid, to wit, while performing the duties of a circuit judge of the United States court heretofore, to wit, on the 12th day of November, A. D. 1901, at the city of Pensacola, in the county of Escambia, in the State of Florida, did knowingly and unlawfully adjudge guilty of contempt of court and impose a fine of $100 upon and commit to prison for a period of ten days Simeon Belden, an attorney and counselor at law, for an alleged contempt of the circuit court of the United States. Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge and was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

The points involved in the Davis and Belden cases are substantially these: On the 15th day of February, 1901, a suit was instituted in Judge Swayne's court, in the northern district of Florida, by Florida McGuire and others against the Pensacola City Company through her attorneys, Simeon Belden and Louis Paquet. The case was not tried at the spring term of court.

On the 19th day of October, 1901, Mr. Belden and his cocounsel, Mr. Paquet, presumably from the city of New Orleans, addressed a letter to Judge Swayne, at Guyencourt, Del., asking the judge to recuse himself in the above entitled case on the ground of his personal interest in the litigated land. To this letter Judge Swayne made no reply. He came to Pensacola and opened his court on the 5th day of November, 1901. It has been contended on the other side of this House that Judge Swayne announced in open court on November 5, 1901, in the presence of the attorneys, Belden, Davis, and Paquet, that his "relative" had purchased block 91 of the land involved in this suit, and that he, learning of the litigation pertaining to block 91, had returned the deed. They have said that he made a general statement in the presence of Davis and Belden on November 5, 1901. Judge Swayne has not said anywhere, nor is there any legitimate testimony in this record, that such a statement was made by him in the presence of Belden and Davis prior to November 11, 1901, after Davis had dismissed in his court the case of Florida McGuire *v.* The Pensacola City Company. Indeed, on November 5, 1901, Davis had not been engaged or employed in the case. Let me here submit Judge Swayne's testimony on this point, and the only statement touching it ever made by him:

On November 5, 1901, while engaged in the trial of a criminal case, counsel for plaintiff in the case of Florida McGuire came into court, and I immediately suspended proceedings and called them up and explained to them the situation as above detailed, and notified them that their letter was not in such form as to be the foundation of a formal order, but that I would not recuse myself as requested. I made my explanation clear and emphatic, and I am certain that they could not mistake or misunderstand the statements of fact that I then made.

He only states that "counsel for plaintiff in the Florida McGuire case came into court," and does not say that Belden or Davis came into court. What counsel? It could only have been Paquet, of New Orleans, because Davis was not then an attorney in the case, and Belden was sick with facial paralysis in his hotel at Pensacola, Fla., according to all the evidence. Hence, Davis and Belden did not hear this statement when he made it, because they were not in court, according to any testimony in this record. There is no legitimate testimony anywhere authorizing the inference that Davis ever was in the Florida McGuire case until the morning of the 11th day of November, 1901, when he was counsel only by courtesy to dismiss the case at the instance of Mr. Paquet and Mr. Belden. Hence, Judge Swayne's offense against Davis was vastly more grievous than the one against Mr. Belden, although it was enormous against that venerable attorney.

The contempt proceedings were instituted on the 11th day of November, and Davis never came into the case until that morning, although it is undeniably true that Judge Swayne was sued by Davis and others on Saturday evening, about 8 o'clock, November 9, immediately preceding the Monday when the contempt rule was entered. Before Davis ever came into the case Belden and Paquet, of the city of New Orleans, had requested Judge Swayne to recuse himself on the trial of the case and had offended his imagined dignity. He had declined to recuse himself and had stated that a "relative" had purchased a part of the land. This was on November 5. He did not have the honesty to state on that day, when refusing to recuse himself, that the so-called "relative" was his wife. An honorable judge should have instantly stated the facts to all the counsel in the case. Judge Swayne contends that he did not object to being sued by these attorneys, for they had a right to sue him. Still, the charge against the attorneys as drawn by Mr. Blount was solely for the fact that they had brought suit against Judge Swayne. Here is the gravamen of the charges against Belden and Davis:

To show cause before this court at a day and hour to be fixed by the court why they shall not be punished for contempt of the court, in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91 in the Chevaux tract, in the city of Pensacola, Fla., a tract of land involved in controversy in ejectment then depending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants.

Belden, Davis, and Paquet had the right to believe that there was some transaction going on between the real estate firm of T. C. Watson & Co. It can not be denied that suit was then pending, or that judgment had already been rendered in favor of

T. C. Watson & Co. against C. H. Edgar to recover commissions for the sale of the land to Judge Swayne or his wife prior to November 5, 1901. Whether this suit had been brought to judgment or not is immaterial.

J. C. Keyser testified, in giving his estimate of the value of the land and in response to other interrogatories, that "I gained from the fact that there is a judgment in Judge McCullough's court for commissions of $70—5 per cent on $1,400—and $8 abstract fee against Charles H. Edgar and in favor of Watson & Co., lot No. 91, to Mrs. Lydia C. Swayne." He further testified that the value of the land was about twice $1,400. Belden and Paquet knew of this suit or judgment. It was freely rumored in Pensacola that Judge Swayne had bought lot 91, a part of the land in controversy before him in the McGuire case, Mr. Belden testified. His testimony is as follows:

The Florida McGuire case against Blount et al. was instituted early in the year, but was not ready for trial at the spring term. During the summer of 1902 the rumor was general through the town that Judge Swayne had purchased lot 91 of the De Rivas tract, which was in litigation before him as judge of the circuit court here. The rumors were so definite and of such form as to leave no doubt in the minds of counsel of the purchase. So, the 19th day of October, Judge Paquet and myself addressed a letter to Judge Swayne requesting him to recuse himself, for the reason I have just stated, being a party at interest; to recuse himself and notify Judge Pardee, so he could assign a disinterested judge at the November term. He never replied to the letter at all, and, so far as I know, never informed Judge Pardee, the circuit judge, of the circumstances surrounding himself and the case. The November term I was sick—had an attack of facial paralysis—but our clients telegraphed me to come over, though I could not appear before the court.

Later, on the 9th or 11th, he replied to our communication, in which he declined to recuse himself, and went on to state he had not purchased the land, that a relative of his had purchased the block of ground in question, and that he had got hold of the deed and returned the deed to the vender of the deed. The vender of the deed was C. H. Edgar, a party defendant in the suit in question, and he being a party defendant, made Judge Swayne a party defendant through him, as we supposed. He stated that the deed had been sent on to this relative at Guyancourt, and he returned it, as he had no interest whatever. The following day, without any reference to the case whatever, the judge called up this, and in his statement he said: "The relative I referred to yesterday, or the day before, is my wife." He went on to say that his wife had paid for it from funds from the estate of her father in Delaware. * * *

It was so positive that she had purchased it, and we also learned that a suit had been brought by Watson & Co. against Edgar for commissions due them by Edgar; the records will show it. Now, upon that we brought suit against Judge Charles Swayne; the first thing we did in the morning, before any business was transacted, was to discontinue the suit. In the meantime Judge Paquet had prepared the pleadings to eject him from that property.

Mr. Speaker, why did Judge Swayne return the deed sent to him by Watson & Co.? Was it because the land was in litigation in his court? Or was it because it was a quitclaim and not a warranty deed? Watson, the senior member of the firm selling him the land, states positively "the negotiations were not completed because Judge Swayne objected to taking any but a warranty deed. That was what he bargained for." "The negotiations were broken off because Judge Swayne objected to taking anything but a warranty deed. The deed was returned to a party in New York." Never prior to November 11, 1901, did either Judge Swayne or any member of the firm of Watson & Co. testify that he returned the deed because the land was in litigation. He planted his refusal to take this deed exclusively on the ground that it was a quitclaim, and never hinted that he returned it because the land was in litigation. He contended that he had bargained for a warranty deed and nothing else would suit him. He cared nothing for the litigation before him and said nothing about it. Therefore it is plain that the suit for commissions against Edgar was pending, or that judgment had already been rendered, on the ground that the sale had been made to Judge Swayne when Belden and Paquet requested him to retire from the case in his court where the land was in litigation.

Mr. Belden says, in testifying: "They went to the real estate agents, and the real estate agents told them that this transaction had been made, and that a suit was pending for their commissions for selling the land from Edgar to Swayne." There is not the slightest proof that Davis was then professionally connected in any way with the case in the Federal court, or ever was until the 11th day of November, 1901, when he went into court and dismissed the McGuire case as a matter of professional courtesy to Belden and Paquet. Judge Swayne said he did not object to these gentlemen suing him, yet if they had questioned his word after he said he was not interested in it I undertake to say that he would have consigned them to prison just the same. He was inflamed solely because they justly charged that he was interested in the land. He did not propose to submit to being questioned, either directly or indirectly, by these attorneys, although it was plain that he was in the midst of a transaction for a part of the litigated land. I undertake to say that if they had offered to prove, as they could have done, that he was interested in the land, he would have spurned their offer and adjudged them guilty of contempt just the same. No matter how plain the facts might have been, if they had hinted or charged in any way that he was interested in the land, he would have adjudged them guilty of contempt. He stated several times that he did not object to being sued, yet the whole gravamen of the contempt charge is that these attorneys did sue him.

Some things are not denied. Briefly to summarize, blank mortgages and blank notes were forwarded to Judge Swayne at Guyencourt, Del., for him and his wife to execute. Some of the testimony shows that the price he was to pay for the land was but half its value. That fact was known and believed by many people in Pensacola. It was notorious that there was a suit pending for commissions, for the reason that the judge or his wife had already bought the land. Judge Swayne admitted from the bench that a "relative" of his had negotiated for the land, not disclosing, as judicial honor would require, that the "relative" was his wife. There is testimony in these proceedings from his lips that his "wife had some money which she inherited from her father's estate," and, further, that "she had paid for this land with her money." With these facts well known, the air being full of rumors, when the attorneys undertook to question the judge about it, he perched himself upon the bench and said that he had explained and would not permit the attorneys to proceed further toward recusing him:

Mr. Speaker, I say they had the right to question his jurisdiction to try this cause. They had the right to sue him in the State court, and they had the right to believe that he was interested in the land. These attorneys would have done violence to their clients if they had not undertaken to oust him from jurisdiction in this cause. They should have charged, as they did charge, that he was guilty of purchasing the land for himself or his wife while it was in litigation in his court. No matter what his alleged dignity led him to say, the facts show that deeds and mortgages were passing back and forth between him and real estate agents of Pensacola in reference to this land.

Mr. GOLDFOGLE. Mr. Speaker, I should like to get my idea clear about the act of Judge Swayne in committing Belden and Davis for contempt. Did the commitment, as made by Judge Swayne, set forth the act alleged to be a contempt of his court?

Mr. HENRY of Texas. The commitment did not. The commitment simply stated that they were guilty of a substantial contempt of his court.

Mr. GOLDFOGLE. Is that all?

Mr. HENRY of Texas. Yes; that they were guilty of a substantial contempt.

Mr. GOLDFOGLE. Are the papers in evidence upon which the contempt proceedings were predicated?

Mr. HENRY of Texas. Yes; and I am going to read from them.

Mr. GOLDFOGLE. What I would like to know is this: Whether the papers clearly indicate that the reason, or rather that the motive, that actuated Judge Swayne was the commencement of a suit against him for ejectment?

Mr. HENRY of Texas. Yes; I am going to take that up right now.

Mr. GOLDFOGLE. Or does it show any other act on the part of Belden and Davis which might be construed into a contempt of court?

Mr. HENRY of Texas. Now, I haven't a great deal of time, but will answer the gentleman's question. This is the charge against the attorneys (not the manner in which they brought the suit):

To show cause why they should not be punished for contempt of the court in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment wherein Florida McGuire is plaintiff and the Hon. Charles Swayne is defendant to be issued from said court and served upon the judge of this court to recover the possession of block 91, the Chevaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was the plaintiff and the Pensacola City Company and others were defendants.

That was the ground, that he had been sued by these attorneys, and Davis was not then in the case. He was not in Judge Swayne's court, was not connected with the litigation in the remotest degree in his court until November 11, although for bringing the suit in the State court on the Saturday preceding November 11 he is charged with contempt and imprisoned and fined $100. There has been some contention that these gentlemen did not purge themselves of contempt. It is true the motion of Blount was not sworn to and the attorneys, Belden and Davis, who were acting under the sanction of their official oaths as officers of the court, did not swear to their answer. Judge Swayne regarded the motion of Blount as being a suffi-

cient pleading and he treated the answer of Belden and Davis as being a sufficient pleading in his court. Their answer did clearly purge them of contempt. As I have mentioned above, Belden was not in Judge Swayne's court on November 11 when he made his statement, neither was Davis. Judge Swayne has not said so, and there is no testimony to show that they were present. This allegation in their answer purges them of contempt:

Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue in the case of Florida McGuire *v.* Pensacola City Company et al. was made.

Third. To the second paragraph showeth: As above stated, they heard no declaration made by the judge referred to in said paragraph.

They denied the facts upon which the contempt charge was based. They denied in this answer that they were present on November 5, as Blount had charged against them. Davis was not an attorney until November 11. Still, for bringing the suit on Saturday, November 9, before he was an attorney in any way in the McGuire case, he was adjudged to be guilty of contempt. Can anyone contend that this judge had the power to punish him when he was not acting as an officer of the court until two days after the suit in the State court was brought? So it is clear that Judge Swayne transcended his power; that he was vindictive and cruel. Because, forsooth, these attorneys believed and charged that he was interested in this land they were made the objects of his judicial wrath and vengeance.

The specification in the O'Neal case is as follows:

ART. 12. The said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of the duties of his office of judge heretofore, to wit, on the 9th day of December, A. D. 1902, at Pensacola, in the county of Escambia, in the State of Florida, did unlawfully and knowingly adjudge guilty of contempt, and did commit to prison for the period of sixty days, one W. C. O'Neal, for an alleged contempt of the district court of the United States for the northern district of Florida. Wherefore the said Charles Swayne, judge, as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

Gentlemen on the other side of this House have contended that Judge Pardee held that Judge Swayne was acting in accordance with the law in imprisoning O'Neal. Judge Pardee made no such ruling. The circuit court of appeals simply decided that Judge Swayne had jurisdiction in contempt cases before his court and that courts had no right to review his action by appeal on habeas corpus proceedings. In the Supreme Court of the United States O'Neal's writ of error was dismissed on the ground that a writ of error was not the proper remedy for carrying a contempt proceeding to the Supreme Court for review. In fact, there is no remedy under the law to review such tyrannical actions of a judge as in the Belden and Davis and O'Neal cases. The power to punish in such cases is peculiarly within the jurisdiction of the Federal district judge, and his action can not be reviewed on habeas corpus before the appellate court by writ of error or otherwise. The circuit court of appeals clearly decided this point in the O'Neal case. The Supreme Court adjudicated it and dismissed the writ of error brought before them by O'Neal in his case pending in that court. Following is a part of the language of the judgment dismissing the case:

And on the motion to dismiss, which was argued by counsel, in consideration whereof it is now here ordered and adjudged by this court that the writ of error in this cause be, and the same is hereby, dismissed for the want of jurisdiction.

JUNE 1, 1903.

The O'Neal case is substantially this: A. Greenhut had been appointed trustee in bankruptcy for one Scarritt Moreno. Greenhut had brought an action in the county court of Escambia County, Fla., for the purpose of having certain land, which was in the name of Moreno's wife, brought into the bankruptcy estate to relieve the land of a mortgage for $13,000, which appeared to be a lien given the National Bank of Pensacola, and by it assigned. Greenhut was a director in the bank of which O'Neal was president; he was also an indorser on Moreno's paper in the bank for $1,500. O'Neal was charged with contempt of Judge Swayne's court for having a difficulty with Greenhut, the trustee in bankruptcy, in which difficulty Greenhut was cut with a knife in several places by O'Neal. For engaging in this affray with Greenhut Judge Swayne contends that O'Neal was guilty of contempt of his court in assaulting the trustee in bankruptcy. O'Neal contends that the facts are as follows, and the testimony tends strongly to corroborate his contention:

That the said Greenhut had been from the organization of the American National Bank, of Pensacola, in October, 1900, a stockholder and director thereof; that while he was such stockholder and director the said bank received from the said Scarritt Moreno a certain mortgage for the sum of $13,000 to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and bona fide transaction, and that the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage; that the said Greenhut was cognizant of the whole of said transaction and knew of its bona fides and honesty, as he did of the subsequent bona fide transfer thereof to Alex McGowan, N. J. Foshee, and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight, and valid transactions.

That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank when he, the said Greenhut, knew, as aforesaid, that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff.

The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned and in the bringing of an unfounded suit against it. The conversation, however, concerning chiefly the bringing of said suit against the said bank, hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would "do respondent up," to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, "Well, you know you lied about the Moreno acceptance, for you said that you would pay it," the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it, the said Greenhut (who was short, stout, heavily built, and apparently much more muscular than respondent) struck the respondent (who is thin and feeble) and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocket knife, and opened it in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

Such is substantially the statement of this contempt case. O'Neal's assault was alleged to have been for the purpose of intimidating Greenhut in the exercise of his duties as trustee and for the purpose of hindering him in doing his duty. The assault was committed a block and a half away from the Federal courthouse; court was not in session and the judge was absent from the district. There is no law of the United States by which O'Neal could be held guilty of committing a contempt of court under such circumstances. His act was not in the presence of the court or so near thereto as to obstruct the administration of justice. O'Neal was not an officer of the court and was not guilty of disobedience or resistance as an officer of the court. He was not resisting or disobeying any mandate, order, or decree of Judge Swayne's court, and Greenhut was not undertaking to carry out any mandate, order, or decree of the court when the difficulty occurred. There was not the slightest evidence that the difficulty occurred because Greenhut was trustee. It was simply a personal matter brought on between O'Neal and Greenhut, which perhaps was induced indirectly by the official actions of Greenhut, but not because he was a trustee or for the purpose of hindering him in his official duties as such trustee. After the impeachment of Judge Peck had failed, and he had so flagrantly violated his power as a Federal judge, the contempt statutes of 1831 were passed. They read as follows:

1. That the power of the several courts of the United States to issue attachments and to inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistence by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts.

2. That if any person or persons shall corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding $500, or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense.

This statute sets the exact limits of the power of Federal judges to punish for contempts. Judge Swayne should have known the provisions of this act. He was quick to see, after consulting the statutes, as he contends, that Belden and Davis were guilty of "misbehavior in their official transactions" as officers of his court under the act of 1831. His eagle eye instantly ascertained that the act gave him the power to punish for "misbehavior as officers of his court," but in the next breath, in a childlike and bland contention, he says that he was ignorant

of the fact that the statutes on contempts prohibited him from punishing for contempt by both fine and imprisonment, although the two clauses of the act were within the range of the same glance of the eye that made the discovery giving him jurisdiction. He read one part of the statute that gave him power to punish for contempt and omitted to read the other part within his vision which limited his jurisdiction. When the statute of 1831 was enacted there was no provision inserted in it that gave Judge Swayne power to punish, summarily, O'Neal for assaulting an officer of his court. Under section 2 of that act he might have been punished for endeavoring, by threats or force, to influence intimidate, or impede an officer of the court in the discharge of his duty. But the punishment should be "by indictment" under the very terms of that section of the law.

O'Neal was entitled to a trial by jury. He was entitled not to be put twice in jeopardy of life and limb. Judge Swayne had no power to compel him to testify against himself in this and foreign matters and offenses, as he did when he was on the stand stating the details of the difficulty. Judge Swayne tried him summarily in a contempt proceeding as if he were trying the case of an assault to murder. This statute clearly divested him of jurisdiction, and this he must have well known. It pointed out to him the method by which O'Neal could have been punished, and in the language announcing his sentence of punishment he quotes the section of the act of 1831, providing that because by threats or force O'Neal was endeavoring to intimidate Greenhut, his trustee, in the discharge of his duty he would punish him for contempt. In reading this statute he should have seen that it directed him to proceed by indictment in such cases, and stripped him of the power to summarily punish this man for an act committed far away from his court room.

In the case of Savin (131 U. S.) Mr. Justice Harlan said:

> It is contended that the substance of the charge against the appellant is that he endeavored, by forbidden means, to influence or "impede" a witness in the district court from testifying in a cause pending therein, and to obstruct or impede the due administration of justice, which offense is embraced by paragraph 5399, and, it is argued, is punishable only by indictment. Undoubtedly the offense charged is embraced by that section, and is punishable by indictment. But the statute does not make that mode exclusive if the offense be committed under such circumstances as to bring it within the power of the court under paragraph 725; when, for instance, the offender is guilty of misbehavior in its presence or misbehavior so near thereto as to obstruct the administration of justice.

O'Neal was entitled to all the constitutional privileges of a man charged with an assault with intent to murder, in this proceeding, yet Judge Swayne took all these privileges from him.

O'Neal was prosecuted in the State courts for this offense, yet Judge Swayne put him in jeopardy a second time, in violation of the Constitution of the United States. No upright man can read the testimony of the proceedings of Judge Swayne in the O'Neal case and say that he acted as a just judge. The wonder is that some outraged citizen, pursued by his vengeance, did not drag this judicial autocrat from his high place, as Virginius dragged Appius from the throne he had disgraced. His victims suffered long and patiently; they permitted him to violate the Constitution and statutes of the United States and to trample upon their most sacred privileges secured by law. He took from them the right of trial by jury, imprisoned them for contempt when no contempt had been committed. We should shut our eyes to partisan politics and arraign this man for all his acts of tyranny and violations of law. In the name of the Constitution and statutes of this country, whose provisions he has violated and disgraced on many occasions, he should be sent before the American Senate.

In the name of the Federal judiciary, whose purity he has tarnished and whose ermine he has stained, he should be impeached for high crimes and misdemeanors—not on one charge alone, because all the specifications conspire to show the tyranny, corruption, and true character of this judicial monster. A reading of the record discloses that from the moment he came upon the bench in the court room his restless eye looked around for some one to mark as the victim of his wrath and vengeance. There seemed to be no goodness in his heart. He was in pursuit of some one over whom to exercise his powers as judge. He sent some of the best citizens of Florida to the bogs and fens of that State. Young Hoskins destroyed his life with his own hand rather than face this man upon the bench. O'Neal, pursued and hounded for months by him, has gone to his reward in another existence. There are also many other citizens of the State of Florida who are trembling and dreading his power. Not since the days of Peck has a judge so abused his high prerogatives.

The power of a Federal judge is great; but give to him life tenure of office and add to it the dogma, "The king can do no wrong," and in a brief period it makes tyrants of most men.

This judge has not hesitated to shut his eyes to plain constitutional provisions. He has denied the sacred right of trial by jury. To scandalize a public functionary under the old sedition laws was an offense, but the defendant had the poor privilege of proving the truth of his charge and the right of trial by jury under the terms of the law. This law against the freedom of speech and the press became odious with the people, and not a vestige of it remains. But in this modern day to speak against this petty judge, whether false or true, brings down his wrath and he refuses to hear the truth as a justification against him, holds at naught the sacred constitutional right of trial by jury, and summarily consigns to prison citizens who dare assert in his court a statutory and constitutional privilege. Oh, for the spirit of the people who blotted out the ancient sedition laws of the early days of the Republic! In the ages past when one of the wise men of antiquity was questioned as to the best possible form of government, he replied: "That in which an injury done to the humblest citizen is regarded as an injury done to the whole community." This spirit taught by the ancients can alone preserve our free institutions and stay the tyrant's hand. [Prolonged applause.]

Mr. PALMER. Mr. Speaker, I hope the gentleman on the other side will use some of his time.

Mr. GILLETT of California. Mr. Speaker, I would like to inquire, before I start to close the debate, if all of the gentlemen on the part of the majority who intend to speak, excepting the gentleman who proposes to close the debate, have spoken? I do not care to close for the minority if they have not.

Mr. PALMER. The time on this side will be occupied as I see fit and when we have to use it.

Mr. GILLETT of California. Mr. Speaker, I submit that is hardly a fair statement. I want to close for the minority. I would like to know if all of the gentlemen have spoken that intend to speak, so that I may have the opportunity of answering them?

The SPEAKER. Generally in the practice of the House the gentleman in charge of the bill, if not by right, at least by usage, has the right to close the debate. It is also true, however, that either through accommodation or a spirit of fairness, the practice of the House has been that gentlemen arrange among themselves by which, if it is desired by either or both sides, the gentleman in charge of the minority report shall close for his side.

The gentleman closing the debate—in this instance the gentleman from Pennsylvania—has the right, if he sees fit to exercise it, to the hour, and the gentleman in charge of the views of the minority, under the agreement, would have the right to have the hour immediately preceding the hour that the gentleman from Pennsylvania controls and gets.

Mr. GILLETT of California. Mr. Speaker, before I enter upon the merits of the case now pending before the House there is an argument made by the gentleman from Massachusetts [Mr. POWERS], which has also been referred to by other Members and also by the gentleman from Pennsylvania [Mr. PALMER], that I desire to notice briefly. It was stated by the gentleman from Massachusetts that all that remained for this House to do was to consider whether or not the articles presented by the committee were in due and proper form. That the merits of the several articles were no longer involved, the same having been settled when the House passed the resolution of impeachment. The gentleman from Pennsylvania has stated that this House can not at this time afford to vote against impeachment, because if we did we would stultify ourselves by reason of the position heretofore taken by us. I desire to say that this is the first time that the Members of this House have had a fair opportunity to inquire into the merits and to discuss them fully upon the grounds and charges which the majority deemed sufficient in the articles submitted by them to warrant impeachment in this case. I believe it is our duty, I believe it is our right, not only to ourselves but to Judge Swayne and to the Senate of the United States, that we should fairly consider these articles and vote upon them as we believe is right and just. If stultification comes anywhere it comes in sending to the Senate for trial groundless charges, ill-considered and not supported by the evidence, and I do not propose, as far as I am concerned, to stultify myself in this manner. I do not believe the Members of this House feel as if they want to stultify themselves in that manner, therefore the argument made by the gentleman is entitled to but little weight. These articles are before us for consideration; they are before us for debate; and we are to pass upon the merits of the case and render such a decision as is warranted by both the law and the evidence. The Senate has the right to demand of us a fair investigation, an impartial investigation, and to be cautious not to send to it charges which will take up its time and impose upon this country a large expense, which are not founded upon sufficient evidence and have no merit; and if, after a full consideration of these articles, both as to the evidence and the law, we are of the opinion that they are supported by both, it is our duty, as public officers,

to so state. We can square ourselves with the country and with the Senate by doing so, and certainly with our own consciences. That is all I care to say in this connection.

Now, then, my presentation of the minority views will take perhaps a little wider range than was first intended because of statements made by gentlemen representing the majority report and who favor impeachment. In the heat of debate the gentleman from Pennsylvania [Mr. PALMER] said that "the track of this judge was strewn with bankruptcies, scandals, and suicides, and he did not believe he had a friend in Florida, politically or otherwise. The gentleman was excited when he said it, and it is not based upon any fact and is not true. The gentleman from Massachusetts said the feeling existing in Florida against Judge Swayne has continued for years. If this is true, if this is so, then it is proper for us to go back in the years past and find out why it is so. Why has this judge enemies in Florida? Why are there men pursuing him in the legislature of that State, in the Senate of the United States, and in this House of Representatives? Has he by reason of his political conduct brought down upon him the ill will of the people, or has there been some other influence at work that has caused the people of Florida to discredit him? Now, Judge Swayne was appointed judge in 1889. He was not confirmed until 1890. When he entered upon the discharge of his duties he walked into a great political storm that was circling over the entire State of Florida. He walked into a storm that was full of passion and prejudice and vengeance. He walked into a storm where there were murmurings against and cursings of the United States Government, its officers, and its laws through the attempt of its officials to enforce violations of the United States election laws. There was appointed with him at that time a marshal and a district attorney, and the President of the United States told them that those laws must be enforced and the guilty punished, and he started to enforce them. He discharged his duty well, but he did not discharge it without bringing down upon him the ill will, and the vengeance, and the malice, and the prejudice of a great many citizens then living in Florida. So intense and bitter was this feeling, so far-reaching was it, that a United States marshal was assassinated in broad daylight and brought home and thrown in front of the court-house. So far was it carried that John Byrd, a witness on the part of the United States Government, was called from his door to the gate and pierced with more than forty bullets.

The judge himself was not safe. They did not content themselves with their conduct in Florida, but they came to the Senate of the United States and endeavored to prevent the confirmation of the judge, endeavored to prevent the confirmation of the district attorney, and to prevent the confirmation of the marshal, officers who, under instructions from the President of the United States and Attorney-General, were endeavoring to enforce the law against crimes that had been committed in Florida against the election laws of the United States.

And I desire at this time to read and make a part of my remarks the language used by Senator Chandler when this matter was pending before the Senate. It shows the conditions existing there at that time, which have followed along through these years and are to-day pervading to a large extent the House of Representatives, and goes a long way to prove the reason for any feeling that may exist in the minds of some of the people of Florida against Judge Swayne:

Mr. CHANDLER. They are engaged in very different business from hunting down the murderers of John Bird and W. B. Saunders. What are they doing, Mr. President? They are hunting down the district judge and the United States marshal and the district attorney, and the Senator from Florida comes here and defames the dead man on the floor of the Senate. That is what they are engaged in. It is easily understood why they know nothing about the details of this business. It is because they have not studied it. It is because they have not sought the means of information which were at hand, and because they are here going in before the Judiciary Committee and trying to prevent the confirmation of the judge and the district attorney and the marshal whose business it is to punish election frauds in the State of Florida, if they can do so by lawful means.

Then Senator Pasco said:

Mr. PASCO. I want that language taken down.

Mr. CHANDLER. Yes, I hope the reporters will take it down, if the Senator from Florida would like it. Let it be taken down twice, if they choose; and I hope the Senator from Florida will remember it, for I say that that is what the Democrats of Florida are about to-day, individually and collectively, and through their representatives on this floor. From the time this judge and this district attorney and this marshal were appointed they have been hunting them down and assailing them and defaming them in every possible way and under all possible circumstances and in every possible place.

That is the condition, Mr. President, in which the State of Florida stands to-day. It has a judge and a district attorney and a marshal appointed by the President, not confirmed by the Senate, who are doing the best they can to punish election frauds and to protect themselves while they are about it. The Democrats of Florida have rallied to assail these men, the witnesses are killed, the United States deputy marshal is killed, and if there are not more of them killed before this business is over it will not be the fault of the Democrats of these half a dozen counties where, by frauds innumerable, crimes beyond measure, a Republican candidate for Congress was counted out and a Democratic candidate for Congress was counted in.

Now, this is the whole case and the whole situation. I do not wonder that the Senators from Florida wish to change the issue. I do not wonder that they wish to draw attention away from the murder of John Bird and the murder of W. B. Saunders, and get up all the stories they can concerning the drawing of jurors and the imperfect administration of justice in the State of Florida.

Those were the conditions existing at that time in the State of Florida when this judge was trying to enforce the laws which it was his duty to enforce. And I might state here that in the first case that was brought to trial he instructed the jury to acquit In the other cases there was a mistrial There were several appeals taken from his judgment to higher courts, and they were all affirmed. The record that Judge Swayne made was the record that was used against him. It was all at that time political. There were no charges of tyranny; there were no charges of abuse of personal liberty; but because he and his marshal and his district attorney were seeking to enforce the laws of the land it brought down upon him the abuse and villification of a large number of the citizens in that part of the country. So intense was this feeling that in 1894 these same people introduced a bill in Congress taking twenty counties out of the northern district, which was then too small, throwing him 'way over into the western end, at Pensacola, where he had but little to do. This was not done in good faith; it was not done because of Judge Swayne's unfitness; it was not done because he was unworthy of the ermine he was wearing; but it was done to remove him from the section of the country where the political feelings were so bitter and intense against him.

After the boundaries of his district were thus changed Judge Swayne went to Pensacola and took up his residence there, as I shall show by the record later on. He went there and established for himself a reputation among the people that was good, and the best people in that part of the country were in favor with him and sympathized with him, and are so to-day.

Immediately after the statement was made on this floor the other day that he had not a friend in Florida there came to me over the wire from Pensacola, from Tallahassee, and other places in Judge Swayne's district telegrams which I desire to put into this record showing that that statement was not well founded.

Mr. MOON of Pennsylvania. Will the gentleman read some of them?

Mr. GILLETT of California. Here is one dated January 14. from Pensacola, Fla., as follows:

Hon. J. N. GILLETT, M. C.,
House of Representatives, Washington, D. C.:

We believe in the integrity of Judge Charles Swayne, and as citizens of his judicial district number ourselves as his friends.

This telegram is signed by the leading merchants and the leading citizens, as well as by the presidents of two of the leading banks of that city. A large number of the best men in Pensacola signed a telegram to the effect that they believed in the integrity of Judge Swayne and that they were not in sympathy with the statements made against him.

The same is true of one from De Funiak Springs and from other parts of his district. Now, when the people of a community where Judge Swayne lives—when lawyers, bankers, and business men, representing the best interests and representing the best element of the community—send telegrams of that kind to this House we should stop and pause and think before we brand him under the charges that have been brought here to his door. I might also say that gentlemen have written letters from Florida to Judge Swayne, Democrats and Republicans alike, condemning the action taken by Representative LAMAR in this matter. I hold in my hand a letter dated January 3, 1904, and which is addressed to Judge Swayne, which I will read:

TALLAHASSEE, FLA., *January 23, 1904.*

Hon. CHARLES SWAYNE,
United States District Judge, Pensacola, Fla.

DEAR SIR: I have been a foreman of one of your grand juries at Tallahassee and also as a petit juror at a different term of court, and it was with great surprise I learned of the attempt on the part of our Congressman to accomplish your impeachment.

Although a Democrat of long years and from birth, I am in no wise in sympathy with this movement, and hasten to express my sentiments to you in this way. Your charge to us as grand jurors was a beautifully expressed and fair-minded and clear statement of our duties, and I but voice the expressed sentiments of the gentlemen whom I had the honor to be foreman of, when I say your conduct was most pleasing to us, and it was the unanimous and openly expressed conclusion of all of us that you not only knew your duties, but knew them well and performed them without fear, favor, or partisanship. Your conduct as a trial judge has always been, when I have been in attendance as a petit or grand juror, that of a conscientious and honest judge.

I do not know how I can serve you other than by expressing to you my sentiments on this matter, as I am manager of large plantation interests in this community and am not versed in the ways of political scrambles, but I at least want to do this much.

Yours, very respectfully,

EDWARD B. EPPES.

Mr. LAMAR of Florida. May I interrupt the gentleman a second?

Mr. GILLETT of California. Yes, sir.

Mr. LAMAR of Florida. Did you read the name?

Mr. GILLETT of California. It is Edward B. Eppes. I suppose you know him?

Mr. LAMAR of Florida. He is one of the best of men.

Mr. GILLETT of California. My good friend will notice that he did not indorse Mr. LAMAR's conduct in these impeachment proceedings.

Mr. LAMAR of Florida. Will the gentleman allow me to interrupt him again?

Mr. GILLETT of California. I want to say to the gentleman from Florida that I have a very limited time, and while I want to be absolutely courteous to the House, I do not care to have my time taken up.

Mr. LAMAR of Florida. Just one statement——

Mr. GILLETT of California. Well.

Mr. LAMAR of Florida. And I will not interrupt you again. I want to disclaim, so far as I am concerned, the truthfulness of Mr. PALMER's statement. I have never alleged upon the floor of this House that Judge Swayne did not have some friends in Florida. Of course any man makes some friends; but if he had a thousand friends it does not disprove the truth of the charges brought here.

Mr. GILLETT of California. I want to say that the gentleman said that Judge Swayne was the greatest tyrant and the most lawless man in the State of Florida, and that is why he is not entitled to friends.

Mr. LAMAR of Florida. I affirm that.

Mr. GILLETT of California. Now, I have another letter, written to Judge Swayne, which I will read:

TALLAHASSEE, FLA., *February 6, 1904.*

Hon. CHARLES SWAYNE,
District Judge, Pensacola, Fla.

DEAR SIR: I have been twice a juror in your court at Tallahassee and wish to express to you my sentiments of loyalty, not only to your courts, but to you. When I went to your court first I had heard so many things against you I was impressed against you, but my impressions readily gave way to your fairness and impartiality on the bench, and I esteem you one of the best judges I have ever served as a juror under.

I have never had any reason from my close observation of you to suspect you of any arbitrary rulings, and if I had not known from outside information your politics I would not have been able to say whether you were a Republican or a Democrat.

While I am a Democrat and was and am a strong supporter of Congressman LAMAR, I wish to tell you I do not indorse this action of his in the least.

I am, yours, respectfully, J. E. WILLIAMS.

Mr. LITTLEFIELD. What town was that?

Mr. GILLETT of California. Tallahassee, the capital of the State of Florida.

Now, then, there has already been offered to the House and printed in the RECORD letters that Judge Swayne received from the bar of his own county, from the leading citizens of Florida, stating that he was a man of high character, that he was a man of integrity, and a most excellent judge, and these letters were addressed to the President of the United States, recommending Judge Swayne's appointment as circuit judge of the fifth judicial circuit. Judge Maxwell, to whom the gentleman from Florida [Mr. LAMAR] on yesterday gave high praise as an honorable gentleman, wrote a letter to the same effect, recommending him to be a member of the circuit court. Now, is it not quite strange that a man who has won the respect and confidence of the people among whom he is living, so that the lawyers of his district should write letters in his behalf, that the leading citizens of his State should write letters in his behalf, giving testimony of his character and his fitness for a judge, that all at once this man should be denounced in that community as a tyrant, as a corrupt judge, and lawless, without standing, without reputation, and a man not fit alone for the bench, but unfit to mingle among the men of his country? I say there must be some reason for this. What is the reason? In 1901 the record shows that Judge Swayne stood high in the State of Florida. He had the confidence of the judges in the State and in his district. He had the confidence of the lawyers that were practicing before him. He had the respect of the people among whom he moved and lived, and Judge Swayne to-day, in my judgment, would have had that same respect—Judge Swayne would have retained that same confidence—if it had not been for the fact that on one Monday morning a banker of that State sought to cut the throat of an officer of his court and he punished him for it.

You can trace back all these troubles to Mr. O'Neal's difficulty. Prior to that time Judge Swayne's record was good; since that time his record has been bad. O'Neal and his hirelings have influenced the legislature of Florida, they have lobbied through it a resolution against Judge Swayne; they have sent copies of this resolution broadcast throughout the land; they have caused the press of the country to write him down, and they have been persistent, tireless, and malicious in doing this. It is O'Neal's lawyers and O'Neal's money that are doing it all. And shall we stand here and by our vote perform the last act in this persecution, and ourselves condemn him upon statements that are unworthy of credit?

Now, look at the O'Neal case. I desire to discuss it briefly, and as quickly as I can. I say the O'Neal case is responsible for it all. A man by the name of Moreno filed his petition in bankruptcy in Judge Swayne's court. The creditors met. Mr. Greenhut was elected trustee, and his election was confirmed. He then became an officer of that court. He then had charge of the affairs of the bankrupt estate and it was his duty to gather it together and hold it for the benefit of the credtiors. It then became his duty to see that the estate belonging to the bankrupt was brought in to be distributed among the creditors. Acting under the advice of his counsel, acting within the line of his duty as an officer of the court, discharging that which the orders of the court required him to do, he commenced an action against Mr. Moreno, and made several of the banks defendants, to recover property of about the value of $12,000. Mr. O'Neal was the president of the American National Bank, which was one of the parties defendant. This suit was commenced on Saturday. Going down the street on the following Monday morning, Mr. O'Neal saw Mr. Greenhut standing by the door of his store. He wanted to speak to him. They walked inside. He said he went into the store to reproach Greenhut. He did reproach him, and in that controversy that took place, which no one saw, O'Neal drew a knife and cut Greenhut through his ear, down across his face to the corner of his mouth, and stabbed him three times in the body. Greenhut went to bed and remained there for three weeks.

When he was able to move about he filed a petition setting forth all these facts—how he had been assaulted and assailed as an officer of the court, how he had been interfered with in the discharge of his duties as such officer—and Judge Swayne very properly issued a rule requiring Mr. O'Neal to show why he should not be found guilty of contempt for interfering with an officer of the court. Mr. O'Neal in his answer admitted that Greenhut was an officer of the court; admitted that he went in there to reproach Greenhut. He admitted that what Greenhut was doing was in the discharge of his duty as an officer of the court and under the advice of counsel, but he gives some other excuse, saying that there were other differences between them which caused the trouble, and claiming that what he did was in self-defense.

The record in the case shows that Mr. O'Neal had a fair trial. A great number of witnesses were called, and while O'Neal claimed in his answer that Greenhut was the one who commenced the trouble the fact appears in this examination that O'Neal himself was the one who struck the first blow. Judge Swayne had a right to inquire into these facts; he had a right to examine the witnesses; he had a right to examine into the matter. He found from the evidence that an officer of his court had been assaulted; he found that this assault interfered with the discharge of his duties, and that it was made for that purpose, and plainly under the law he had a rignt to find O'Neal guilty of contempt for the commission of this act. Would it not be a strange thing if a judge should be so powerless that he could not protect the jurors of his court, the clerk of his court, and his receivers and trustees when they went out to discharge their duties and carry out the orders and decrees of the court? Has it come to a pass that the courts are so powerless that their officers may be stabbed; that they may be threatened; that they may be intimidated in the discharge of their duties, and because these things do not happen in the immediate presence of the court that the court has no authority to act and summarily punish the guilty parties for contempt? There is no such law as that in this country of ours.

The law is plain that where an officer of the court in the discharge of his duty has been interfered with the court may cite the party to show cause why he should not be punished for contempt. And I want to call your attention to a few of the decisions on this point. There is reported a case in volume 21 of the Federal Reporter, at page 761, which is very instructive on this particular branch of the law. The court says:

It is a contempt of court to interrupt and violently break up the examination of a witness before an examiner, by persisting in the claim to dictate, prompt, and control the answers of a witness. It is also a contempt to insult the examiner by use of violent and abusive language to him after he has left the office and is upon the street. Nothing in the Revised Statutes or section 725 has taken away the power of the court to punish such contempt.

And on page 771 the court says:

The privilege of protection to all engaged in and about the business of the court from all manner of obstruction to that business, from vio-

lence, insults, threats, and disturbance of every character, is a very high one, and extends to protect the persons engaged from arrest in civil suits. It arises out of the authority and dignity of the court, and may be enforced by a writ of protection, as well as by punishing the offender for contempt.

This is the law of the land; this is the law under the section of the Revised Statutes which gentlemen have called our attention to. It must be the law, because without it the courts could not do business. How long would men carry out the orders placed in their hands by the court if they knew that the moment they walked out on the street they would be assaulted, intimidated, or stabbed? How long could we maintain peace and good order in the court if it is powerless to protect itself and officers? Judge Swayne dicided right. O'Neal petitioned the Supreme Court of the United States for a writ of habeas corpus, and the proceedings were dismissed. He then took the matter before Judges Pardee, Shelby, and McCormick, setting forth all the facts presented by the record on file herein, and the judges, after listening to all of the statements and arguments, used this language, reported in one hundred and twenty-fifth volume of the Federal Reporter:

The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office. Under such orders and in that respect it would seem to be immaterial whether at the time of the resistance the court was actually in session with a judge present in the district, or whether the place of resistance was 40 or 400 feet from the actual place where the court was actually held, so long as it was not in the actual presence of the court nor so near thereto as to embarrass the administration of justice.

Under the bankruptcy act of 1889, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open, and, under section 33 and others of the same act a trustee in bankruptcy is an officer of the court. The question before the district court in the contempt proceedings was whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for an account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and, if so, was it under the facts proven a contempt of the court whose officer the trustee was. Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction said court was fully authorized to hear and decide and adjudge upon the merits.

Here is the decision of the appellate court sustaining Judge Swayne on the question of jurisdiction, holding that he had a right to inquire into this matter and to punish O'Neal as he did; and are we now going to send to the Senate the finding of O'Neal guilty of contempt, as one of the articles of impeachment, after the court has affirmed the action of Judge Swayne? Can it be reasonably supposed that the Senate will convict Judge Swayne upon a charge that has been supported by the courts of the United States? I think not. It seems to me of all the charges that this one has the least merit of any.

BELDEN AND DAVIS.

Now, taking up the question of finding Belden and Davis guilty of contempt. A great deal has been said on this and a great many statements have been made that seem to me to be hardly borne out by the evidence. An action was commenced in Judge Swayne's court in the spring by Florida McGuire against the Pensacola Improvement Company and others to recover possession of over 200 acres of land; the description of the property involved in this action was so uncertain that nobody could locate it. During the summer Judge Swayne, in company with his wife, sought to buy several pieces of property in the city of Pensacola, Fla., as an investment. They were shown a piece of land known as lot No. 91. Judge Swayne had no knowledge that it was in any way in litigation before his court or included in the property referred to in the said action. He went to Guyencourt, Del. A deed was made by one Edgar, the owner of lot 91, but it never fell into the hands of Judge Swayne at all and he never saw it. It was retained by Edgar's agent, Mr. Hooten, who kept it in his possession.

Hooten advised Judge Swayne, by letter, that Edgar would not give a warranty deed for the lot because he was afraid of the Caro claim. The Caro claim was land involved in the litigation before Judge Swayne in the case of Florida McGuire. Judge Swayne answered the letter by saying: "You may cut this out." That is all he ever said in relation to it. He gave no reason why he would not take the lot. He did not say: "I want a warranty deed," or "I will not take it because you failed to give me a warranty deed," but as soon as it was brought to his knowledge that it involved land in litigation before him he ordered it to be cut out and he did not take it.

So later on Judge Paquet and Mr. Belden, representing the plaintiffs in this action, wrote a letter to Judge Swayne about this matter, asking him to recuse himself because he had an interest in part of the land involved in the litigation before him. This letter was not answered. Now, I have heard Judge Swayne's action criticised here because he did not answer this letter. I have heard Members say "Why didn't he answer this letter?" I express my opinion that a lawyer is not acting fairly when he writes a judge a letter upon matters of that kind. He almost is in contempt of court by doing so. If Judge Swayne was interested in this property, there was a way to bring it to the knowledge of the court by filing a formal petition, setting forth the facts and asking him to recuse himself, and serving a copy of it upon the attorneys for the opposite side. This is what lawyers practicing before the courts in an honorable way should have done; and the defendant had a right to be heard because he was interested in this action as much as the plaintiff. But they wrote a letter asking Judge Swayne to recuse himself without finding out whether or not he owned the land, and without giving any notice to the defendants. When court convened on the 5th of November Judge Swayne, having received this letter and properly not answering it, because he could not send his opinion and his decrees throughout the country, because they must go on file where they will stand as a part of the records of the case, called the counsel for plaintiffs before him. He made a statement to them that he had received the letter; that they had made no formal demand on him to recuse himself, and he informed them at that time that he had no interest in this land, he or his wife owning no portion of it, and that he would try the action. Judge Belden states that Judge Swayne said at that time that a relative of his owned it. Judge Belden was not there on the morning when the court made this statement and he never heard it. Judge Swayne says differently and Mr. Blount, who heard it, testifies differently. This fact was brought to the knowledge of plaintiffs' counsel in open court by the judge when he called them before him in the morning of November 5. He stated at that time that he owned no interest in this land and that he had never bought it. He stated to them that his wife was negotiating for it, but as soon as he found out that it was involved in litigation pending before him that he immediately stopped all negotiations, and inasmuch as he had not been formally asked to recuse himself he proposed to go ahead and try the case.

What more could an honorable judge have done? He was not to throw up his duties simply because somebody wrote him a letter. It was his duty to try cases that came before him as a judge. He was paid for that. The defendants had a right to have him sit and pass upon the merits of that case, and these lawyers by writing a letter could not force him out of the trial of it, and neither had he any right to withdraw from the trial of that case unless he was legally disqualified, and he was not, and nobody to-day claims that he was. Now, these gentlemen made no efforts to present a petition and ask him to recuse himself. On Saturday the criminal calendar was completed. There was only one case to be tried, and that was the Florida McGuire case. Counsel for plaintiff asked to have it postponed until Thursday. The defendant had made arrangements to try the case on Monday. The witnesses were all in Pensacola. They were within half an hour's call of the court-house. But the plaintiffs wanted a postponement, and to this the defendant most strenuously objected. Now, Judge Swayne made this fair statement to them. He said: "I will try this case on Monday unless you come into court and show some cause why I should not and make some motion in a regular way, as a lawyer would make a motion." They informed him that they would show cause why it should be continued. That was about 6 o'clock at night. They did show cause. As soon as they had eaten their dinner they went to the store of Mr. Prior, one of the parties to the suit. They sent word and brought Judge Belden down. It has been said here by the gentleman from Alabama [Mr. CLAYTON], and I think by the gentleman from Pennsylvania [Mr. PALMER], that Judge Belden was not present that evening, but Judge Belden says that he was, and you can find it in the record. He came at the time when the commencement of an action against the judge was talked over. He signed the papers himself.

Why did they commence this suit? Why were they in this great hurry? They had made no effort to find out who the owner of the property was. In five minutes they could have gone to Mr. Watson or Mr. Hooten and found out that Mr. Edgar owned this property. They made no inquiry whatever. They acted simply upon a rumor without making any effort to ascertain if it was true. They did not bring the suit in good faith. They brought it for the sole purpose of placing the judge where he had to recuse himself or proceed with the trial with the public knowing that he had been sued for part of the land. There was no occasion for this great hurry. There was no occasion to get the sheriff up at 11 o'clock at night and put the papers in his hands and tell him they must be served at all hazards that night. There was no occasion why Mr. Paquet should write a piece for the newspaper that a new move had been taken in the Florida McGuire case and send it down to the paper that it might appear in the morning. Why all this unseemly haste? Why all this great anxiety to sue a judge that stated to them he never owned the land? If anybody owned

it his wife owned it, and they should have sued her. There can be only one reason, there can be only one motive, and that was the motive that Judge Swayne attached to their actions, that they sought to embarrass him, that they sought to interfere with the trial of this action; that, as lawyers of his court, they acted with gross and serious misbehavior. Gentlemen tell us that because this action was commenced in a State court no contempt was committed in the Federal court. Does it make any difference where a man commits the act if it is contemptuous of the court? Were they not acting in a bad manner? Was not their conduct unbecoming honorable lawyers? Were they acting in good faith? When Judge Belden was asked the question why he commenced this suit in this manner he said, "Why, we wanted to get service on him before he got out of the State." Yet they knew he was to be there Monday morning to hear the case when it came up. You may say all you please about it and discuss it from every conceivable standpoint, but there is one important fact in the case that answers it all. Judge Paquet, the leading counsel in the Florida McGuire case, the man who helped to put up this job, the man who was charged with contempt, came into court and filed with the court a written statement stating that he had acted wrongly in the matter, that the court was justified in viewing it as he did, and asking the court to forgive him for his conduct, and humbly apologizing. Now, what is the use of arguing that they did not intend to do this or that they did not intend to do that; that they were all acting in good faith; that they were acting as under the law they had a right to act, when one of them, the principal one, comes into court and confesses to the contrary, when one of them makes a statement showing the motive with which this suit was commenced? It seems to me that this written statement made by Paquet answers every argument that has been made, and clearly shows that Judge Swayne was not mistaken when he found that they had been guilty of misbehavior as officers of his court and therefore guilty of contempt.

Mr. Davis says, and it is contended here on the floor, that he was not an attorney in the case at the time the action against Judge Swayne was commenced. The evidence is clear that he was. The clerk of the court spoke with him that Saturday about getting out subpœnas. Judge Belden says he was in the case before that evening. Judge Paquet says he had been there for a week consulting with parties in the suit and finally asked him if he had any objection. Paquet, Belden, Marsh, and, I think, Keyser, one of the parties to the suit, all say that Mr. Davis was an attorney in the suit long before this action was commenced in the State court of Florida against Judge Swayne, although he denies it. Now, they say they intended to dismiss the suit on the following Monday morning. There is no evidence to that effect. Judge Swayne had no knowledge of it. It was not brought to his notice, it was not made part of evidence in the case. If that is true, why did they not put it in their answer? And here is another circumstance quite important to consider. When this matter was being heard before Judge Swayne, when he had it under consideration, Mr. Belden and Mr. Davis never took the witness stand in their own behalf. They filed a statement, but it was not under oath. They filed a statement by which they tried to deny his jurisdiction. They called Mr. Blount and Mr. Fisher to the stand, but these two parties charged with contempt, these two parties charged with conduct that would have disbarred them as lawyers in that court, when the matter was pending before Judge Swayne, never took the stand to give any evidence in their own behalf at all. Is it not passing strange that a man who is innocent will not take the stand when charges are made against him? Is it not passing strange that if these men were acting in good faith they would not have so stated to the court? What was Judge Swayne to conclude from this action, from their manner, and from the course they were pursuing? Just the same as any fair-minded judge would have concluded, that they were wrong and they knew it, but would not submit themselves to an examination which would clearly indicate that they were wrong. Now, they said he acted arbitrarily; they said he acted viciously in passing judgment upon them, and it is charged that he acted ignorantly, because why; he imposed upon them a fine and imprisonment. Judge Swayne says that was a mistake of law on his part, and I want to say not only was Judge Swayne mistaken on this point, but Judge Blount, who was there also, knew nothing about it, and the parties themselves, who are claimed to be good lawyers, had no knowledge of this law, and when they took the matter before Judge Pardee they never raised that point then, as far as this record shows, until Judge Pardee himself pointed it out. Now, then, because a judge has entered a judgment not in accordance with the law, is he to be impeached? If that is true, then no judge ever sat upon the bench—not even Blackstone—whom under the same reasoning we could not impeach. Will we impeach judges for the mistakes they make, for errors they make? Why, I want to call your attention to something that shows how easy it is to make mistakes by those who are good lawyers. In filing his report the gentleman from Pennsylvania, in speaking about this matter, stated that they purged themselves under oath. He said they filed an answer there which was verified by which they purged themselves and for that reason the proceeding against them should have been dismissed under the law.

Mr. PALMER. Will the gentleman point me to the place where I said that they filed an answer which was verified?

Mr. GILLETT of California. You stated they purged themselves under oath.

Mr. PALMER. That is quite another matter. The witnesses testified that they filed an answer to purge themselves. That is the record on which I go. I never said that the answer was sworn to.

Mr. GILLETT of California. I will call the gentleman's attention to it in just a moment, as I do not want to misrepresent the gentleman. You made it in your argument when you first brought the matter up, but you did not make it the last time you spoke because your attention was called to it. You said, on page 15 of your report, that—

> knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount. He ignored the sworn denial of the accused that they had committed or had intended to commit a contempt.

Now, the law does not require the statement to be verified, and the record shows that neither Belden or Davis answered under oath.

The gentleman from Pennsylvania [Mr. PALMER] says:

> Presuming that Judge Swayne knew the law, he knew that proceedings for contempt not committed in the presence of the court must be founded upon an affidavit setting forth the facts and circumstances constituting the alleged contempt, sworn to by the aggrieved party or some other person who witnessed the offense.

Now, I say that that is not the law. It is not the law as laid down by the Supreme Court of the United States. It is not the law as laid down by the courts of the land. It is only laid down in two States, where they have statutes requiring it, and as able a lawyer as the gentleman from Pennsylvania [Mr. PALMER] made a statement that is erroneous so far as the law is concerned, and just as bad as that made by Judge Swayne. He says:

> Judge Swayne knew that issuing of proofs without filing the proper affidavit was erroneous, and that the error is not cured by the subsequent filing thereof.

Mr. PALMER. The gentleman from Pennsylvania quoted there, did he not, to sustain his position?

Mr. GILLETT of California. The gentleman says that the rule of common law is this—"that if any party can clear himself upon his oath, he is discharged." Knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt.

That is the statement. They not only failed to file an answer under oath denying the charges preferred against them, but they absolutely failed to take the stand and defend themselves or to make any explanation under oath as to what happened or what prompted them to commence the action or that their motives in so doing were proper, although other witnesses were called. Now, the case stands like this: It has been passed upon by the circuit court on a writ of habeas corpus. It was held that they were officers of his court and he had a right to inquire into the proceedings, he had a right to inquire into the merits, and he did inquire into the merits and he passed upon them and found the parties guilty of contempt. It is the duty of a lawyer to uphold the dignity of the court of which he is an officer. It is his sworn duty to see that the court is not brought into disgrace and that its orders and rules are observed. It is his duty to treat the judge courteously and kindly, and not slander him and not bring unfounded suits against him. If he does these things he is guilty of a misbehavior as an officer of the court and under the statutes he may be punished. It seems to me there is nothing that can be shown—that there is nothing in the charges urged here—that Judge Swayne acted without authority of law when he took those men and imposed upon them the judgment which he did for contempt of his court. They were not acting in good faith. They conspired together in the dead of the night. They wrote that article for the newspaper. They never followed the suit up at all. The only thing that they ever did was to file one paper, and that was the end of it. They brought this matter before the public and in that way accomplished the very purpose which they sought to accomplish. And after having been punished for doing this act, they make that the basis here for impeachment. Why, while Mr. Davis was before the Florida legislature lobbying

through resolutions condemning Judge Swayne, he never at that time thought this was sufficient grounds against Judge Swayne for which to impeach him, and no mention of it whatever is made in the resolutions passed by the Florida legislature.

RESIDENCE.

Now, let us take up the question of residence. It is contended that Judge Swayne did not have a legal residence in the northern district of Florida. I ask the gentlemen, Where has Judge Swayne lived since 1895? Where has his home been? Where has he gone and voted, and where has he paid taxes? If his home has not been in Florida, where has it been?

Mr. PALMER. Does the gentleman from California [Mr. GILLETT] ask me?

Mr. GILLETT of California. Yes, sir; I will ask the gentleman from Pennsylvania [Mr. PALMER].

Mr. PALMER. Then I will say that it has been at Guyencourt, Del. He has been there two hundred and twelve days out of every year.

Mr. GILLETT of California. The gentleman from Pennsylvania says that Judge Swayne has been in Guyencourt, Del., for two hundred and twelve days out of every year. Then I say to the gentleman from Pennsylvania [Mr. PALMER], since you have established that fact so conclusively, that settles the whole business. And why did you not bring Guyencourt, Del., down here to prove it? We told those prosecuting Judge Swayne to bring their witness, and they sent a Mr. Laney to Guyencourt to find proof that Judge Swayne made his residence there, and they never brought a single, solitary witness who lives in Guyencourt, Del., or any other place to prove that Judge Swayne lived there. Judge Swayne has not lived there for years.

Mr. PALMER. I say he said it himself.

Mr. GILLETT of California. He has not lived there for years, and the clerk of his court, in his evidence, stated that Judge Swayne spent his summer vacation at Guyencourt. If Judge Swayne lived in Guyencourt it was an easy matter to prove, and not a single witness was sworn as to that fact. I want to call the attention of the gentleman from Pennsylvania, who has been so industrious in fixing Judge Swayne's residence at Guyencourt, to the fact that the records show where Judge Swayne was during various months of every year from 1895 to 1903. The gentleman says that he was two hundred and twelve days at Guyencourt. I demand that the gentleman produce his evidence. There is no witness who testified that he was there any number of days. You have taken the number of days he was holding court and you have assumed that he was the rest of the time at Guyencourt, Del.

But let me tell you, Mr. Speaker, if that were true, if he was there in the old homestead and by the side of his old mother, 84 years of age, now in declining health, and whose life will probably be taken by reason of this vicious prosecution, he was not there as a resident, but as an affectionate son visiting his mother. He tried cases in January, February, March, April, May, October, and November and December, in Alabama, Texas, and Louisiana, and in his own court. Why do you not bring your witnesses and fix his home as being there? Is Guyencourt, Del., abandoned of people? Have you not the power of subpœna to bring them here if you know it is a fact, or have you kept it from this House and left it to be proven in the Senate? This shows how utterly unfounded is this charge and the efforts that have been made to mislead the minds of honorable gentlemen of this body so that they may vote impeachment. I will file a statement here showing that he was trying cases during all the spring and winter months and the fall months. I will read them to the gentleman from Pennsylvania, if he will listen. This is from 1895 down to 1903. In 1895 he was trying cases during the months of February, March, April, May, November, and December. In 1896, during the months of January, February, March, April, May, June, July, November, and December; in 1897, January, February, March, April, May, June, July, and September; in 1898, February, March, April, May, June, November, and December; in 1899, January, February, March, April, May, June, October, November, and December; in 1900, January, May, June, July, September, October, November, and December; in 1901, January, February, March, April, May, June, July, September, November, and December; in 1902, January, February, March, April, June, November, and December; in 1903, January, February, March, April, May, June, October, November, and December. All through these years, I will state to the gentleman from Pennsylvania [Mr. PALMER], the record shows that Judge Swayne was either in Louisiana, Alabama, or Texas trying cases; that he was assigned there by circuit judges, and I will let it go on record that because for a few weeks or a few months during the heat of the summer he spent the time with his mother on the old homestead where he was born, in Delaware, the gentleman from Pennsylvania charges him with a high crime, and expects and will ask the honorable Senate of the United States to convict him and dismiss him in disgrace from the high office which he now holds. If this is all you have to base your claim for nonresidence on, I say it is the duty of this House to turn it down, and this question should never have been raised here.

Mr. PALMER. Will you yield to an interrogation, now that you have exhausted the peroration?

Mr. GILLETT of California. Yes, sir.

Mr. PALMER. Do you mean to tell the House that Judge Swayne was in those places that you have named during those months you have named? Is it not true that he was ninety-three days a year outside of his district holding court?

Mr. GILLETT of California. I say this: I copied it from the record of the clerks of the courts, that he was holding court those very months. I copied it but last night, and propose to put it in the RECORD. I do not say that he was at those places all through the month. Sometimes he was there all the month and sometimes a part of the month, and some of the time was spent in traveling backward and forward to the places stated. Is there any evidence to show that his house is in Delaware? Is there any evidence to show that his furniture is in Delaware? He left Delaware years ago and moved to Philadelphia, where he practiced law, and after having won the confidence of the leading citizens of Pennsylvania, in 1885 he went with his family to Florida; and in 1895, when the House of Representatives had legislated him out of his district, he went to Pensacola and registered there in that city and told the clerk of his court and Mr. Northup to find a house for him if they could, and they said they never could get him a suitable place, though for several years they tried to do so.

He tried to purchase three properties from 1896 to 1900. He did rent the Simmons house in the fall of 1900 and moved in with his family. In the spring of 1893 he bought the A. C. Blount home, which he now owns, and late in the fall moved into that. When he went away to hold court in these different places he registered himself "Charles Swayne, Pensacola, Fla." Does not a man know where his home is? To comply with the law must he have a mansion, must he keep a carriage and servants, must he live in a house of his own? Can he not maintain a residence and live in a hotel or live in a boarding house? If he can not, a bachelor never can hold office in this country without standing some chances of being impeached. His own conduct shows that he intended to reside there. He did reside there; he made his home there; he did his business there; and I want to say that when Mr. Hooten wrote him about these deeds that he said he had in his possession, he says, "You may take the matter up when you come home." Mr. Hooten, one of the leading citizens of Florida, writing him in Delaware, says, "We will take these matters up when you come home."

Of all the unfounded charges in this world that can be brought against a man to degrade and impeach him is this charge made against Judge Swayne that he had no residence in northern Florida. He had no residence any place in the world if he had no residence there. The intention governs, and, under the decision read here by the gentleman from Maine [Mr. LITTLEFIELD] in his address, referring to the case from Colorado, there can be no mistake as to the law in this matter. Are we going to ask the Senate of the United States to impeach Judge Swayne and to degrade him because in obeying the commands of his superiors, as the law obliges him to do, he spent a large part of his time out of his district in different States? I say there is no merit to this question at all. I do not see how gentlemen can vote for impeachment with the facts standing here as they do stand, and, as far as I am concerned, I do not propose to do it.

PRIVATE CARS.

Now, take the question of private cars. I want to hurry along as quickly as I can. Take the question of using these private cars. I do not want to be understood as commending the conduct of any public officer in riding in private cars furnished gratuitously by a railroad company. I do not stand here to say it was right for Judge Swayne to do so, but I do contend this, that under the circumstances it does not present a case of that enormity which would authorize us to commence impeachment proceedings. There was no intent to corrupt or influence him. It was not accepted with that in view. The railroad was in the hands of the receiver and the proceedings were pending before his court. He was the head of it. It was under his control; it was managed by the orders that he made and by his officers, and while in Guyencourt, Del., the receiver, Mr. Durkee, of his own volition, sent a private car to Delaware for him. The car cost nothing to move it back and forth from Jacksonville to Guyencourt, not a thing in the world. The porter upon this car was engaged there by the month and his

wages went on just the same. The conductor that had charge of the car was paid by the month and his wages went on just the same, and after the car had been sent to Guyencourt it had to be hauled back any way.

Now, if Judge Swayne had said to Mr. Durkee: "I want you to get out of here with your car, and I will ride back in another one," and if he had done so that would have been all right; but because he went into the car of the road of which he was the head, after he had been requested by the receiver to come back to Jacksonville, and consumed a few provisions on the way down, and this ten years ago, it is made now the basis of an impeachment proceeding.

Mr. MOON of Pennsylvania. Thirteen years ago.

Mr. GILLETT of California. This took place thirteen years ago. I suppose the expense included some beefsteak, perhaps a little cabbage, some potatoes, and small potatoes at that, if we are to measure them by the character of the proceedings here in relation to this matter. And because he accepted this courtesy from the receiver, because a few provisions were furnished to feed him for twenty-four hours they ask us thirteen years afterwards to impeach him. I say it is trifling with the Senate of the United States to send a matter of this kind there in a serious way.

He made his trip to California and he made it at his own expense. There is no evidence that the company was ever out one farthing on account of that trip. No complaint was ever made by the creditors at all that they were ever wronged; and it seems to me that if it is worth anything it simply stands here as a living example of the efforts that are being made to bring Judge Swayne into disgrace in this country. While I say I do not commend the use of private cars, if you start in to impeach upon this ground, where are you going to stop? The highest officials in this land have accepted courtesies of this kind, judges and governors, and are doing it to-day. Where are you going to stop? How long since we have become so righteous that we will go back thirteen years to impeach a public officer for riding in a private car, when we could have found them riding in private cars within a month, if we had sought evidence against them?

I do not believe this House will vote in favor of that charge. I feel confident that the Senate of the United States will not treat it seriously.

Now, there is another charge that walks in here at the eleventh hour as one of great importance, and one which will surely persuade this House to vote impeachment—it is the question of expenses. It seems to me, Mr. Speaker, that the record shown here by the gentleman from Iowa [Mr. LACEY] clearly cuts this out as an article of impeachment. What attitude are we in? Suppose we did agree that under a fair construction of the law that a judge was only entitled to receive what would be his actual expenses incurred and no more. Suppose we all conceded that that was the construction that should be placed on this statute, and that none other could be placed on it. Look at the record. It stands before us here that a large majority of the judges of the United States in years past have construed that law to mean that they were allowed an allowance of $10 a day when ordered to hold court out of their district. When the matter in 1896 was brought to the attention of the Senate, Senator Allen, from Nebraska, called the attention of the Senate to the fact that some of the judges in the land were using this as a means of drawing $10 a day when their expenses were less. Senator Allen introduced an amendment that they should only receive their actual expenses incurred. The Senate passed the amendment, it came to the House, and we refused to concur; and that, too, with the knowledge on our part of what the judges in this country were doing.

Later on, in 1898, this matter came up before the House of Representatives. At that time the gentleman from Alabama [Mr. UNDERWOOD] used this language:

> Now, this section in the bill very materially changes the provisions of section 715 of the Revised Statutes. In the first place, it provides a compensation of $10 a day to the district judges during the time they are traveling from their homes to the places where they hold extra courts. The statute already gives them $10 a day compensation during the time they are holding courts, but this gives them an additional compensation of $10 a day while traveling back and forth.

The gentleman from Alabama was then of the opinion—I believe he was a member of the Appropriations Committee—that this $10 a day was compensation granted to them under the law, which they were drawing and which they had a right to draw and receive. Then this colloquy took place:

> Mr. UNDERWOOD. As I understand, the judge gets $10 a day after he gets to the place where he is going to hold the court.
> Mr. CANNON. Not the district judge, but the circuit judges.
> Mr. UNDERWOOD. When a new district judge is sent to hold court when another judge is sick, he gets, under the law, $10 a day.
> Mr. CANNON. I do not so understand it. Let me give my understanding, so as to get the exact difference between us. I understand the district judge gets his $5,000 a year, if that is it——
> Mr. UNDERWOOD. Yes.
> Mr. CANNON. When he goes outside to hold court, he does not get anything.
> Mr. UNDERWOOD. My friend from Illinois, I think, is mistaken When he goes to attend court he gets $10 a day compensation for holding that court during the days he is there, and I think that is sufficient, for he already gets $5,000 a year, and to pay him $10 per day while at court will more than cover his expenses and it is sufficient compensation without giving him the additional amount in this bill.
> Mr. CANNON. Commencing on line 16, "expenses of judges of the circuit courts of appeals"——
> Mr. UNDERWOOD. That excepts the circuit court judges, and they would not receive it anyway, for it is their duty now.
> Mr. CANNON. I understand when the circuit court is held away from the residence of one of the circuit judges—I mean the appellate court—they get $10 a day.

So the controversy goes on. It was stated here in 1898 on the floor of this House and to the Members present and to all the world, so the Members of the House understood it, that the law as it then stood entitled the judges, when sent out of their districts, to receive $10 a day. That is the construction placed upon it by the Members of this House; and with this understanding the bill passed and became a law; and now are we, after the language that was used in 1898, when the present law was reenacted by Members of the House; after the debates that have taken place concerning this question and recorded at the time; after we decided that judges were to receive $10 per day as an allowance or compensation, going to impeach a man because he took the $10 a day, when the law intended that he should receive it, and everyone at that time so understood it?

Mr. BEDE. Will the gentleman answer a question?

Mr. GILLETT of California. Yes.

Mr. BEDE. Has not the House already impeached Judge Swayne?

Mr. GILLETT of California. I say that through an awkward proceeding, by putting the cart before the horse, without the power or opportunity to debate the specifications that we were going to send to the Senate, we have voted to impeach Judge Swayne, but I want to say this to the gentleman from Minnesota, that if we at that time made a mistake, and we are not brave enough to take it back now, we are not worthy to be Members of the House of Representatives. [Applause.]

Mr. BEDE. If Judge Swayne is innocent he ought to have a trial?

Mr. GILLETT of California. No, sir; there is nothing to try if he is innocent.

Mr. BEDE. Have we not done the worst thing we can? He has been impeached before the country, and everybody is talking about it; if he is innocent he ought to have a trial, and if he is guilty the people ought to have a trial. [Applause.]

Mr. GILLETT of California. If Judge Swayne has been impeached before the people of the United States it has been done by those who have been maliciously pursuing and hounding him for several years.

Mr. BEDE. Did not the gentleman from California agree to the impeachment a month ago, and hasn't he been discussing it ever since?

Mr. GILLETT of California. If I made a mistake in the first instance, I want to say to this House that I have the manhood to stand up and say, after the disclosure of all these facts which I have mentioned, that I did Judge Swayne an injustice, and if I have a chance I am going to vote to undo the wrong I did him. [Applause.]

Mr. BEDE. Are we going to impeach the Judiciary Committee of this House?

Mr. GILLETT of California. The Judiciary Committee of this House is no more infallible than are men.

Mr. LITTLEFIELD. I want to say to the gentleman that nine members of the Judiciary Committee were against this proposition in the beginning.

Mr. PALMER. I would like to inquire of the gentleman what information he has now that he did not have when he voted to impeach Judge Swayne. Has there been any testimony taken before the Judiciary Committee since that time? Is not the record just the same as it was when we voted?

Mr. LITTLEFIELD. I would like to answer that question.

Mr. PALMER. I am not asking the gentleman from Maine.

Mr. LITTLEFIELD. The gentleman does not want me to answer.

Mr. GILLETT of California. Mr. Speaker, the gentleman asks me what information I have. I have this information: I have a statement from the Secretary of the Treasury as to the number of judges throughout this country who had charged the same amount, and which the gentleman from Pennsylvania [Mr. PALMER] refused to be permitted to be shown. Right or wrong, I have it. I have this also: I have a statement made

by honorable Members of this House in 1898 that it was the intention of the law that these judges should draw $10 a day, and when they draw $10 a day under that statement we have no right in fairness and in just spirit to say they should be impeached for doing it, and I am not going to do it. [Applause.]

Mr. BEDE. The gentleman admits that the judge has already been impeached. I am not a lawyer. I am here as a plain American citizen. The lawyers seem to have muddled the case. You have already impeached a judge in high office in the United States. Now, the question is one of mere formality of sending the articles of impeachment to the Senate, and yet the lawyers in this House have been trying the case for a week. I am a plain American who wants information.

Mr. GILLETT of California. If the gentleman is a plain American, I will ask him to stand on his American manhood and do unto an American what he would have an American do unto him. [Applause.]

Mr. BEDE. I am willing to do that.

Mr. GILLETT of California. If this House, through the Judiciary Committee has made a blunder, if they have made a mistake in this matter, and now, after five or six days of debate, we have ascertained that we have made a mistake, we can recall what we have done, with honor and credit to ourselves, from the Senate and put it before the world that Judge Swayne is not to be impeached.

Mr. LITTLEFIELD. And what about the Hoskins case? They relied on the Hoskins case. Call their attention to that. There is no foundation for that.

Mr. GILLETT of California. We have stated in the report to this House, or the majority has reported, and it has been argued on this floor, that Judge Swayne should be impeached because he entered into a conspiracy to ruin an old man by the name of Hoskins living in the State of Florida. The charges were baseless. They were unfounded. Even the gentleman from Pennsylvania [Mr. PALMER] confesses now that there is nothing in them. It has been said around this great broad land of ours that Judge Swayne has bankrupted men, and that Mr. Hoskins was one of them. They sowed all this seed, and now when, in fair discussion, we take it up they try to get away from it. They have abandoned the Hoskins case. They have abandoned the charges that every bankrupt estate that went before his court was reeking with wrong. They have abandoned the charge that he was corrupt. They have abandoned the charge that he was ignorant, and they have abandoned eight or nine of the specifications that were furnished us. I say that it is time, they having backed out of all of these charges, that we as Members of this House should back out of the rest and get our feet on ground that is fair and honest.

If the prosecutors have a right to abandon seven or eight charges that have been sent broadcast over the land, that have been brought on the floor of this House, that have been embraced in the majority report, because they are groundless and without merit, then we have the same right to abandon the rest when they are no better grounded. Now, I say it is time the people of this country should commence to look into this matter a little. It is time the Members of this House should commence to stand on what is fair and right. It is time we should stop listening to reports from Judge Swayne's political enemies in Florida and endeavor to try the case fairly and justly and honestly and upon its merits. It seems to me he has been hounded and pursued from one end of the country to the other. They have made charges and have backed down from them. They have sent to every Member, under seal, the articles passed by the Florida legislature. Everything that O'Neal's money could do, everything that a vicious spirit could do to blacken the reputation of Judge Swayne has been done. What act has Judge Swayne ever done in the discharge of his duty that is wrong? He has tried cases throughout Alabama; he has tried cases throughout Louisiana; he has tried cases throughout Texas, month after month and year after year; and no complaint comes from these States of his wrongdoings. He is indorsed here as a judge and as an able judge by Judge Pardee. Where has he been wrong? Whom has he wronged? What judgment is not right? Where is there any corruption shown in this case? I have present here, and I shall put them in the record, telegrams from the best citizens of Pensacola, Fla.—lawyers, doctors, bankers, merchants, and timber men—in which they repudiate the statements made on the floor by the gentleman from Pennsylvania [Mr. PALMER] and the gentleman from Florida [Mr. LAMAR] and say that they have confidence in Judge Swayne's integrity and that they are not behind this impeachment proceeding. The following are the telegrams:

PENSACOLA, FLA., *January 14, 1905.*

Hon. J. N. GILLETT, M. C.,
House of Representatives, Washington, D. C.:

We believe in the integrity of Judge Charles Swayne, and as citizens of his judicial district number ourselves as his friends.

F. C. Brent, J. J. Stephens, jeweler; C. L. Mann, jeweler; Peter Lindenstruth, jeweler; Thos. C. Watson, real estate; M. M. Lewey, editor and publisher; H. H. Friedrichsen, merchant tailor; Chas. Friedrichsen, merchant tailor; J. E. Watson, engineer; McKenzie Oerting & Co., merchants; John A. Merritt, ship broker; H. G Dailva, merchant; F. F. Bingham, lumber merchant; W. K. Hyer, jr., cashier, First National Bank; B. Jones, broker; W. F. Fordham, M. D.; John B. Guttmann; J. F. Taylor, broker; A. M. Stillman, deputy collector of customs; Jas. A Rikson, deputy collector of customs; Alfred Moog, wholesale liquor dealer; David Bear, retired merchant; Morris Bear, wholesale merchant; Max Klein, merchant; Dave Dannehise, liquor dealer; Alex. Lischkoff, jeweler; Henry Horsler; N. G. Forcheimer, shoe merchant; Wm. Falk, merchant; D. Kugelman, wholesale merchant; H. Mueller, merchant; B. L. Gundersheimer, merchant; A. M. Cohen, wholesale notion merchant; J. N. Broughton, contractor; J. F Rhodes, merchant; C. J. Kenney, merchant; W. L. Gilmore, hotel keeper; Geo. Bell, merchant; Jacob Kreiger, underwriter agent.

PENSACOLA, FLA., *January 13, 1905.*

Hon. J. N. GILLETT,
Washington, D. C.:

We believe that Judge Swayne has the friendship and good wishes of many citizens of Pensacola, among them ourselves.

Douville Timber Land Company; C. F. Marsh, M. D.; A. C. Binkley, lawyer; C. W. Hageman, timber merchant; F. B. Bruce, merchant; Laz Jacoby, merchant; B. Gerson, merchant, Louis Friedman & Co., merchants; B. E. Clutter, merchant; P. Stone, merchant; W. J. Forbes, merchant; Sol. Cahn, merchant; W. H. Knowles, First National Bank; L. Hilton Green, Citizens' National Bank; P. H. Whaley, Episcopal minister; T. F. McGourin; F. G. Renshaw, M. D.

DE FUNIAK SPRINGS, FLA., *January 15, 1905.*

Hon. J. N. GILLETT, M. C.,
Washington, D. C.:

We regard statements in Congress on 13th against Judge Swayne as being too strong. Having attended his courts and seen his action upon bench we express our confidence in his fairness. We are his friends.

F. N. Kolmetz, deputy marshal; L. F. Cochrane, jeweler; L. W. Plank, real estate dealer; W. F. Hall, salesman; J. H. New, confectionery merchant; Frank R. Hartford, deputy collector; Chas. M. Cox, attorney at law; J. F. King, M. D.; D. H. King, merchant; Robert Alsabrook; John D. King, merchant; M T. King, merchant; P. F. Leight; A. L. Breach.

CEDAR KEY, FLA., *January 14, 1905.*

Hon. J. N. GILLETT, *Washington, D. C.:*

We express disapproval of Representative PALMER'S statement in House. We have high opinion of Judge Swayne's judicial action and have confidence in his impartiality as a judge. We believe he has always been fair to citizens of Levy County.

J. L. COTTRELL, *Member Town Council.*
J. R. MITCHELL, *Town Marshal.*
J. A. WILLIAMS, *Attorney.*
R. L. TISON, *Merchant.*
FRANK CALE, *Pilot.*
FRED. CUBBERLY, *Attorney.*

TALLAHASSEE, FLA., *January 14, 1905.*

Hon. J. N. GILLETT,
House of Representatives, Washington, D. C.:

We admire Judge Swayne, thinking him fair, honest, and able.

Jeff D. Ferrell, blacksmith; B. R. Kelley, merchant; Frank E. Craig, constable; W. L. Strickland, deputy United States marshal; J. F. Hill, merchant; J. Ball, Bloxham Hotel; Aaron Levy, merchant; A. Wannish, cigar manufacturer; R. B. Carpenter, merchant; W. E. Bradley, farmer; G. R. Hodes, naval stores; R. E. Hightower, merchant.

TALLAHASSEE, FLA., *January 14, 1905.*

Hon. J. N. GILLETT,
House of Representatives, Washington, D. C.:

Palmer's statement that Judge Swayne has no friends not fact. All Republicans and many Democrats admire him here.

EDMUND C. WEEKS, *Surveyor-General.*

MARIANNA, FLA., *January 14, 1905.*

Hon. J. N. GILLETT,
House of Representatives, Washington, D. C.:

I have served as United States commissioner for near ten years; attended fifteen terms of court; sent near 400 cases for final trial before Judge Swayne. Talked with grand and trial jurors and defendants, and never heard anything but praise for Judge Swayne from any of them. He has thousands of friends, and the charge that he has not is base and slanderous. Letter follows.

JOHN THOS. PORTER.

Let the people of Florida pass on this question themselves and you will find the best citizenship of Florida denouncing

this very proceeding as they are already denouncing it. Judge Swayne has friends in Florida. He numbers among his friends men who stand high in society and in the business world. I was there and I listened to the O'Briens and the Keysers and others of that ilk, and I saw them there upon the stand and I sized them up, and I say there is no evidence produced that for a moment can convince my mind that Judge Swayne is guilty of any of the charges preferred against him. Champagne to carry through the resolution of impeachment in the Florida legislature; six or seven lawyers lobbying the bill; a Federal judge with only one Republican friend on the floor. Is it wonderful that he was impeached by the State of Florida? And the only thing now that they rely on, it seems to me, in which there can be a particle of merit, is the question of Davis and Belden and the question of his nonresidence, and they are absolutely without a foundation. I was proud yesterday when the gentleman from New York [Mr. COCKRAN] said so eloquently, so logically, that he did not believe in the charge of these expenses; when he spoke of the right that a judge had to protect his officers because of the protection to which they were entitled to receive under the law that justice might be administered in the courts. I thought he spoke well and spoke advisedly, and I wish it could be read again to the Members of this House before they take their votes. And in conclusion I wish to say I know not what other Members of this House may do, I know not what views they may entertain, but as far as I am concerned, having been connected with this matter for nearly a year, having been to Florida and in several of its cities observing the manner and demeanor of witnesses on the stand, finding out something about the spirit that is behind this, inquiring into the merits both from the facts and the law, I can not say that I would do justice to my conscience if I would vote to send to the Senate articles of impeachment so groundless as they are, to have the Senate spend its valuable time in passing upon them sufficiently long to kick them out, and I trust that this House, in all spirit of fairness, with an attempt to do what is right and just by a man, will weigh these matters carefully and satisfy their own consciences and their own hearts that they are right before they answer to their names when the roll is called. [Great applause.]

APPENDIX.

JUDGE CHARLES SWAYNE.

APRIL 1, 1904.—Referred to the House Calendar and ordered to be printed. Mr. GILLETT of California, from the Committee on the Judiciary, submitted the following views of the minority (to accompany H. Res. No. 274):

On the 10th day of December, 1903, the House passed a resolution, a copy of which is as follows:

[House resolution No. 86, Fifty-eighth Congress, second session.]

Mr. LAMAR of Florida submitted the following resolution:

"Whereas the following joint resolution was adopted by the legislature of the State of Florida:

"'Senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida.

"'*Be it resolved by the legislature of the State of Florida:* Whereas Charles Swayne, United States district judge of the northern district of Florida, has so conducted himself and his court as to cause the people of the State to doubt his integrity and to believe that his official actions as judge are susceptible to corrupt influences and have been so corruptly influenced;

"'Whereas it also appears that the said Charles Swayne is guilty of a violation of section 551 of the Revised Statutes of the United States in that he does not reside in the district for which he was appointed and of which he is judge, but resides out of the State of Florida and in the State of Delaware or State of Pennsylvania, in open and defiant violation of said statute, and has not resided in the northern district of Florida, for which he was appointed, in ten years, and is constantly absent from said district, only making temporary visits for a pretense of discharging his official duties;

"'Whereas the reputation of Charles Swayne as a corrupt judge is very injurious to the interests of the entire State of Florida, and his constant absence from his supposed district causes great sacrifice of their rights and annoyance and expense to litigants in his court;

"'Whereas it also appears that the said Charles Swayne is not only a corrupt judge, but that he is ignorant and incompetent and that his judicial opinions do not command the respect or confidence of the people;

"'Whereas the administration of the United States bankruptcy act in the court of said Charles Swayne and by his appointed referee has resulted in every instance in the waste of the assets of the alleged bankrupt by being absorbed in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people;

"'*Be it resolved by the house of representatives of the State of Florida, the senate concurring,* That our Senators and Representatives in the United States Congress be, and they are hereby, requested to cause to be instituted in the Congress of the United States proper proceedings for the investigation of the proceedings of the United States circuit and district courts for the northern district of Florida by Charles Swayne as United States judge for the northern district of Florida, and of his acts and doings as such judge, to the end that he may be impeached and removed from such office.

"'*Resolved further,* That the secretary of state of the State of Florida be, and is hereby, instructed to certify to each Senator and Representative in the Congress of the United States, under the great seal of the State of Florida, a copy of this resolution and its unanimous adoption by the legislature of the State of Florida.

"'THE STATE OF FLORIDA,
"'OFFICE OF THE SECRETARY OF STATE.

"'UNITED STATES OF AMERICA, *State of Florida, ss:*

"'I, H. Clay Crawford, secretary of state of the State of Florida, do hereby certify that the foregoing is a true and exact copy of senate joint resolution in reference to Charles Swayne, judge of the United States court for the northern district of Florida, passed by the legislature of Florida, session of 1903, and on file in this office.

"'Given under my hand and the great seal of the State of Florida, at Tallahassee, the capital, this the 7th day of September, A. D. 1903.

[SEAL.] "'H. CLAY CRAWFORD,
"'*Secretary of State.*'

"*Resolved,* That the Committee on the Judiciary be directed to inquire and report whether the action of this House is requisite concerning the official misconduct of Charles Swayne, judge of the United States district court for the northern district of Florida, and say whether said judge has held terms of his court as required by law, whether he has continuously and persistently absented himself from the said State, and whether his acts and omissions in his office of judge have been such as in any degree to deprive the people of that district of the benefits of the court therein to amount to a denial of justice; whether the said judge has been guilty of corrupt conduct in office, and whether his administration of his office has resulted in injury and wrong to litigants of his court.

"And in reference to this investigation the said committee is hereby authorized and empowered to send for persons and papers, administer oaths, take testimony, and to employ a clerk and stenographer, if necessary; to send a subcommittee whenever and wherever it may be necessary to take testimony for the use of said committee. And the said subcommittee while so employed shall have the same powers in respect to obtaining testimony as are herein given to said Committee on the Judiciary, with a sergeant-at-arms, by himself or deputy, who shall serve the processes of said committee and subcommittee and execute its orders, and shall attend the sittings of the same as ordered and directed thereby. And that the expense of such investigation shall be paid out of the contingent fund of the House."

The author of said resolution, Representative LAMAR, was requested by the subcommittee appointed to investigate said charges contained in said resolution, to submit to it a statement setting forth specifically the charges referred to in a general way in said resolution. In compliance with this request, Mr. LAMAR presented to said subcommittee the following, to wit:

"In re Charles Swayne, United States district judge in and for the northern district of Florida: Specifications of matters to be presented for investigation before the investigating committee of the House of Representatives, United States Congress.

"*Specification 1.*—That the said Charles Swayne, judge of the United States court in and for the northern district of Florida, for ten years, while he has been such judge, was a nonresident of the State of Florida, and resided in the State of Delaware; that he never pretended to reside in Florida until May, 1903; that during said time of his nonresidence, by such nonresidence, he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failure to be in reach for the disposition of admiralty and chancery matters and other matters arising between terms of court needing disposition.

"*Specification 2.*—That said Charles Swayne, as such judge, appointed one B. C. Tunison as United States commissioner; that it was charged that it was an improper appointment, and that testimony was offered to such effect before said appointment.

"*Specification 3.*—That the said Charles Swayne, as such judge, appointed and maintains one John Thomas Porter as United States commissioner at Marianna, but that said Porter does not reside at Marianna, but at Grand Ridge, 16 miles away, and is never at Marianna or at his office except when notified of an arrest, necessitating people having business with United States commissioner, often at expense and inconvenience, to go to Grand Ridge, and necessitating the holding of prisoners for a day or two, at their inconvenience and in imprisonment at the expense of the Government, until said Porter sees fit to come to Marianna.

"The said Swayne, although there is great necessity for a commissioner at Marianna, has refused to appoint such.

"*Specification 4.*—That said Swayne, in the administration of his court, has been guilty of great partiality and favoritism to one B. C. Tunison, mentioned in specification No. 2, and a practicing attorney in said court; that so great and well known has this partiality and favoritism become that it has created the general impression that to succeed in that court before the said Swayne it is necessary to retain the said Tunison.

"*Specification 5.*—That said Swayne has been guilty of oppression and tyranny in his office, incorrectly and oppressively and without just cause imprisoning one W. C. O'Neal, one E. T. Davis, and one Simeon Belding upon feigned, fictitious, and false charges of contempt of his said court.

"*Specification 6.*—That said Charles Swayne has willfully, negligently, and corruptly administered bankruptcy cases in his court, to the extent that the assets of bankrupts have, in all or nearly all cases, been squandered or dissipated in paying extraordinary fees and expenses and never paying any dividends to creditors.

"*Specification 7.*—That said Charles Swayne was guilty of oppression and tyranny in his office to one Charles Hoskins upon an alleged contempt, resulting in the suicide of the said Hoskins, and said alleged contempt proceedings being brought for the purpose of breaking down and injuring one W. R. Hoskins, who was charged in said court with involuntary bankruptcy, but who was defending and resisting such charge.

"*Specification 8.*—That said Swayne corruptly purchased a house and lot in the city of Pensacola while the said house and lot was in litigation in his court.

"*Specification 9.*—Ignorance and incompetency to hold said position. Under this specification many illustrations could be given, among them a case in which he took jurisdiction in admiralty in violation of the treaty between the United States and Sweden and Norway, and in one case, that of Sweet *v.* Owl Commercial Company, in which he charged the jury to exactly and diametrically conflicting theories of law.

"*Specification 11.*—That said Swayne, by reason of his absence from the State, failed to hold the term of court which should have been held at Tallahassee in the fall of the year 1902, during the months of November or December.

"*Specification 12.*—That the said Charles Swayne has been guilty of conduct unbecoming an upright judge in that he has procured as indorsers on his note, for the purpose of borrowing money, attorneys and litigants having cases pending in his court.

"*Specification 13.*—That the said Charles Swayne has been guilty of maladministration in the affairs of the conduct of his office; that he has discharged people convicted of crime in his court. Illustration, case of Alonzo Love, convicted in the year of 1902, of perjury."

The committee, on February 10, 1904, proceeded to Florida to take testimony in support of said charges, and examined many witnesses and received a large amount of documentary evidence. After receiving all the evidence and hearing arguments for and against the matters set forth in said specifications, your committee met to consider the same, and we all agreed that specifications numbered 2, 3, 6, 7, 8, 9, 11, 12, and 13 were not proven or were not of sufficient gravity to warrant impeachment charges being made.

The majority of the committee were of the opinion that specifications 1, 4, and 5 had been proven; that Judge Swayne also had wrongfully granted a continuance in the case of W. H. Hoskins, a bankrupt, when he desired to go to trial, and refused to hear his witnesses, and that charges of impeachment against him on these grounds should be preferred.

From this I dissented, because I did not believe that the evidence and the law warranted such a conclusion. I looked upon the impeachment of a Federal judge as a very serious matter, the proceeding being a quasi criminal one, and felt that before charges should be preferred that the mind should be satisfied beyond a reasonable doubt and to a moral certainty of the truth of the matters alleged, and that said matters should be of a most serious character, if not a high crime or misdemeanor, of such a willful and intentional misbehavior in office as to amount to a denial of justice to litigants or to cast discredit upon the court and to cause a loss of confidence in the honesty, integrity, and morality of the judge. I could not persuade myself to believe that every error made by the court, or every mistake made by him in the discharge of his high duties, should be considered sufficient grounds to impeach him. I realized that even the judge of a court is liable to err, both as to law and facts, that his decisions are not always correct, that his judgments are likely to be wrong and oppressive, and that he may exercise his discretion in such a manner as to defeat justice.

If a judge were to be impeached for every error which he committed that inflicted injury upon others, Congress would have to remain in constant session, and it would be the busiest court in the world. If every judge who has wrongfully found a person guilty of contempt should be cited to appear before the bar of the Senate to answer charges of impeachment, the business of that body would be blocked for many a day. How long would the authority of our courts and their decrees be respected if every dissatisfied litigant and every person found guilty of contempt could come to Congress, introduce a resolution with a great flourish of trumpets charging the judge with ignorance, corruption, tyranny, incompetency, and dishonesty, and thereupon the judge be investigated and brought before the bar of the Senate? The dignity of the courts must be maintained, and their judgments and decrees must be respected. Therefore Congress should be very guarded and careful in preferring charges of impeachment. The case, to warrant such charges, should be a very strong one, and before Congress acts there should remain no reasonable doubt that the judge against whom complaint has been made has willfully, knowingly, and intentionally been guilty of serious misbehavior in office, or has been guilty of some high crime or misdemeanor.

With this rule in my mind, I have carefully considered all of the evidence submitted, and I can not say that I feel satisfied therefrom that Judge Swayne has misbehaved in office; that he has been guilty of any high crime or misdemeanor; that he has been corrupt, tyrannical, or oppressive, or that his conduct is unbecoming a judge. Neither am I prepared to say that in the matters charged against him by the majority that he has committed any error of law, or that he acted in a tyrannical, vindictive, or oppressive manner. Neither do I believe that the evidence in the case warrants the action taken by the majority or is sufficient to cause the House of Representatives to prefer charges of impeachment, and to substantiate this belief I shall now consider the evidence in connection with charges preferred by the majority and the rules of law governing the same.

NONRESIDENCE.

First, as to the charge of nonresidence and the inconvenience, annoyance, injury, and expense to litigants in his court by reason thereof:

The evidence shows that in the year 1885 Judge Swayne moved from Pennsylvania to the State of Florida to practice law. In the year 1890 he was apointed district judge of the northern district of Florida, and shortly thereafter he moved to St. Augustine, which was in his district. In June, 1894, the boundaries of the district were changed, and St. Augustine became a part of the southern district of Florida. After this Judge Swayne ceased keeping house in St. Augustine and stored his furniture. He went to Pensacola, Fla., then the largest city in his district, and requested a friend to place his name on the register of voters. This was not done. From 1895 until 1900 Judge Swayne did not own or rent any house in Pensacola, or in his district, but boarded when there in hotels and with private families.

When he went to Pensacola first he directed Mr. Marsh, the clerk of his court, to find him a suitable house. Mr. Marsh testifies that he tried to find a house from October, 1895, to October, 1897, but could not get a suitable one. After that he tried to buy a house for him, and sought to purchase the Wright house, the Piagio house, and the Chipley house, but failed to get either. Captain Northrup testified that when Judge Swayne first came to Pensacola he asked him to get for him a suitable house and that he took Judge Swayne in his buggy and drove him about to find a house but failed.

In 1900 he rented a house from Thomas C. Watson & Co., put his household furniture in it, and paid rent and insurance until May, 1903, when he moved into a house purchased by his wife and where he now lives. There is no direct and positive evidence or any evidence at all that from the year 1895 down to May, 1903, Judge Swayne had a home anywhere in the United States excepting in Florida. During a part of this time his family were in Europe. They lived with him for a short period in Pensacola, and his son came and lived with him for a while.

In the resolution it is charged that during this time he resided in Delaware or Pennsylvania, but no evidence of this kind was offered, and it is very evident if Judge Swayne resided in either State and made his home there that it would have been a very easy matter to have established that fact by an abundance of proof. A list of witnesses to prove that he resided in Delaware was furnished the committee, but none were called, and the prosecution rested without offering to call any of them, hence it is reasonable to suppose that it could not be proven that Judge Swayne resided in that State. In fact, he says he left Delaware in 1867 and has never since that date made his home there. Judge Swayne must have a residence somewhere. He established a residence in Florida in 1885, and there is no proof that he ever left that State to make his home elsewhere, or that he intended to do so.

The fact that he went north every summer to spend his vacation, or be with his aged mother, does not prove that he changed his residence, because this is a practice followed by some of the Federal judges in the South. The heat of that country becoming intolerable, they go north during the summer months. In 1900 he moved his furniture into a house in Pensacola rented from Thomas C. Watson & Co., and for three years paid the rent. He boarded at times in the Escambia Hotel and part of the time in private boarding houses during the time he was in Pensacola. The records of the court show that he averaged about two months each year in his district in the actual trial of cases; that he usually came to Pensacola a day or two before the term of court, and after the term was over would depart. It also appears in evidence that he would return to Pensacola also at times when the court was not in session and between terms.

Now, then, it being charged that he was a nonresident of the district and therefore guilty under the statute of a crime, to wit, a high misdemeanor, it falls upon the prosecution to prove beyond a reasonable doubt that Judge Swayne did not reside within the district but maintained a residence elsewhere, and I submit that absenting himself any length of time from the district does not alone prove that he is a nonresident of it. The prosecution have not shown where his residence is if it is not in his district. Between 1895 and 1899 Judge Swayne requested parties in Pensacola—W. H. Northrup and Fred March—to find for him a suitable residence, and they testified that no suitable place could be found. He also attempted to purchase a house and also took some steps toward building one. This clearly shows the intent on the part of Judge Swayne to reside in his district, and surely a man's intent always controls on a question of residence. Residence is clearly a question of intent. A man chooses his own residence and that residence remains until he decides to have another. There is no evidence that Judge Swayne had no intent to establish his residence in Florida and in his district, or that he had any intent to establish it somewhere else. That he paid no taxes or did not vote is not conclusive that he did not reside in his district. Neither are necessary to establish residence.

But it is said he was absent from his district nearly ten months during each year. But this, as said before, does not prove his residence was not there. Well, it is said, it is a strong circumstance and it proves that he was neglecting his business; that he was not discharging the duties of his office, and from this fact he should be impeached. Let us see. It is true that Judge Swayne was absent from his district, and for months; but it is not true that litigants in his court suffered great or any inconvenience thereby, or that they suffered any loss. Judge Swayne tells us the reason why he was away and where he was. He was on duty. He was not on a vacation, enjoying the quiet and rest of Guyencourt, Del., or idling away his time in seeking pleasures, but he was on duty most of the time. Under the law the circuit judge of a district may order a district judge to go into other districts and hold court, and also to sit on the circuit court of appeals.

The records in this case show that Judge Pardee and Judge McCormick ordered Judge Swayne to hold court in Alabama, Texas, and Louisiana at different times, and also to sit on the circuit court of appeals, and that he obeyed this order, as it was his duty to do. The certificates of the clerks of different courts in the States just named show when Judge Swayne held court therein, and here follows the record, not giving the States and courts, which can be obtained, but the number of months in which he held court in each year in said States and out of his district, commencing with 1895:

1895.—April, May, November, and December, four months.

1896.—January, February, March, April, May, June, November, and December, eight months.

1897.—January, February, March, April, May, June, and July, seven months.

1898.—January, February, March, April, May, November, and December, seven months.

1899.—January, February, March, April, May, June, October, and November, eight months.

1900.—January, May, June, September, October, December, six months.

1901.—September.

1903.—January and February.

Holding court for two months on an average in his own district would make him holding court on an average of about nine months each year. And this, it must be admitted, is a good record for holding court in the Southern States. A large part of the other three months, no doubt, were used by the court in preparing decisions and taking a vacation unless he decided all of his cases from the bench, which is not likely. The record also shows that not only did he hold court in other districts seven and eight months during the year, but when the time for holding court in his own district arrived that he went there and dispatched all of the business and kept his docket clear. What does the majority want to impeach him for? Because he was absent from his district under orders; because he only worked nine and ten months a year holding court; because he kept his docket clear; because he did not work hard enough? No; certainly these can not be the reasons. Then what are they? If litigants were subjected to "inconvenience, annoyance, injury, and expense," as stated in the specifications, during the time he was absent from his district under orders from Judges Pardee and McCormick, then whose fault was it? And what right have parties to make this the basis for charges of impeachment, and what just reason can this committee give to accept the same as sufficient for preferring charges?

Now, the presumption of law is that Judge Swayne is a resident of his district. As long as a party retains an office which he holds during good behavior he is presumed to continue his domicile in the place where he is to exercise his functions. (Oakey *v.* Eastin, 4 La., 69.) This presumption, as already stated, must be overcome by evidence sufficiently strong to satisfy the mind beyond a reasonable doubt, because under the statute it is made a high misdemeanor not to reside in the district. It can not be overcome by hearsay evidence or by opinions of parties, as sought to be done in this case, but by satisfactory evidence which is competent and relevant. One may be considered as dwelling and having his home in a certain town, though he has no particular choice there as the place of his fixed abode. (2 Me. Repts., 411.) A man is not prevented from obtaining a residence in a place where he

goes to permanently make his home by the fact that his wife and children remain in his old home. (1 Bond, 578.)

Neither does absence from a man's place of business for a reasonable time cause him to lose or forfeit his residence there. Of course the judge's residence must be a legal one as distinguished from a constructive one, and his intent, coupled with his acts, go to make up this residence; that he pays no taxes or does not vote is not evidence sufficient to rebut the presumption of his residence. He may not have any property to pay taxes on, and may not, under some circumstances, care to vote. When a judge goes to a place avowedly for the purpose of making it his home, requests others to try and rent him a suitable house in which to live, endeavors to purchase a suitable place when he learns he can not rent one, contemplates building a home when he can not buy, and finally succeeds in renting a house which he moves into and pays rent thereon for three years, and finally occupies, with his family, a house purchased by his wife, surely must have established the fact that it was his intent in good faith to make his home in that place, and in the absence of a very strong showing it must be conceded that he has established a residence there.

Having established this residence he can not lose it because his duties as a judge require him to hold court in other States within the circuit in which his district is for seven and eight months a year, or by spending a vacation during the hot months of July and August with his aged mother in Delaware. Under all these facts it can not be said that Judge Swayne has violated the statute, and neither has he made any excuses for his nonresidence. He explained his absence from the district, as above stated, and surely this can not be urged as a sufficient ground for his impeachment.

This brings me to the other question stated in the first specification, to wit:

"That during said time of his nonresidence, by such nonresidence he has caused great inconvenience, annoyance, injury, and expense to litigants in his court, not so much by failure to hold terms of court as by failing to be in reach for the disposition of admiralty and chancery matters, and other matters arising between terms of court needing disposition."

Of course, if, as has just been stated, he was absent under orders holding court elsewhere, he is to be excused. But what are the facts on this question? J. E. Wolfe, a United States district attorney from 1895 to 1898, and for two years thereafter assistant district attorney, speaking of the loss and inconvenience to litigants caused by the absence of Judge Swayne from the district, says:

"I do not know of any case in which there has been an embarrassment on account of Judge Swayne's absence, and I do not know of any civil proceeding in which litigants were damaged or injured by the absence of the judge."

Mr. Marsh, the clerk of the court, was asked this question (237 of record):

"Q. Do you know of any loss to litigants by any inconvenience resulting by reason of the absence of Judge Swayne?—A. Never a complaint, except in one instance, and that was the signing of a bill of exceptions * * * when Judge Swayne was holding a term of court in Waco, Tex. I shipped the bill to him and it was signed and returned in time."

W. A. Blount, one of the leading lawyers of Florida, says:

"Whether, as a matter of fact, his absence has resulted in injury or expense, I do not know. I can not say now if any cases have been delayed by his absence."

B. S. Liddon, one of the attorneys for the prosecution, attempted to show that he had a case which he was forced to settle because the judge was absent, and that he had a good defense to it. He said the action was commenced in the summer, and that Judge Swayne would not return until November. The facts are, as finally admitted by the witness when confronted with the record, that the suit was commenced on January 25, 1897, after the court had adjourned on January 9; that it was settled in February, and that the court returned from Texas, where he had been ordered to hold court, and held a term of court in Pensacola on March 6.

Another lawyer for the prosecution, Mr. Davis, was put on the stand to testify to inconvenience caused litigants by the judge's absence. He complained that he could not get a bill of exceptions signed readily because the court was absent in Delaware. It appears from the evidence that the delay was caused by the fault of Mr. Davis by not incorporating into the bill certain documentary evidence which the court directed to be included in it, but even then the bill was signed in time and no loss followed to anyone. One Marshall was sworn as a witness to prove that he was forced to settle a bankruptcy case owing to the fact that he could not get a hearing. A short time after the matter was commenced the judge was holding a term of court and Marshall never asked to be heard. I have cited the only three instances shown by the prosecution to substantiate this charge. All amounted to nothing; and it is quite evident, with the great industry of the gentlemen behind this movement, that if there was anything to support the charge they would have found it.

CONTEMPT OF O'NEAL.

Second. The majority contend that Judge Swayne should be impeached because he found W. C. O'Neal guilty of contempt and sentenced him to jail; that there is no law authorizing such a judgment, and that the judge acted arbitrarily and oppressively. I can not agree with the majority either as to their construction of the law or as to the facts. They have stated the strongest case possible in this matter against Judge Swayne without inquiring if the record does not contain facts to justify his conduct and to uphold his judgment. The facts are these:

On the 29th day of August, 1902, one Scarritt Moreno filed in the district court for the northern district of Florida his petition in bankruptcy. On September 15, 1902, one Adolph Greenhut was appointed trustee of the estate of said bankrupt. That the said Greenhut, as such trustee, in carrying out the implied orders of the court appointing him, and in the discharge of his duties to collect and recover the assets of the bankrupt, commenced an action in equity for the purpose of having a certain deed of property purchased by said bankruptcy in the name of his wife, and to have certain mortgages thereon declared null and void.

The American National Bank of Pensacola was made a party defendant in this action; W. C. O'Neal was the president of the bank. The action was commenced Saturday afternoon, October 18, 1902. On the following Monday morning the said W. C. O'Neal, when passing the office of the said Greenhut, where were kept the papers of said estate and the business thereof transacted, stopped and said to Greenhut that he wished to speak to him, and Greenhut replied, "I will see you right now," and both gentlemen stepped into Mr. Greenhut's office. What transpired in that office was only seen by Greenhut and O'Neal, and their statements are conflicting, O'Neal testifying that he went in there to reproach Greenhut for commencing the action, that hot words passed between them, and that Greenhut threatened to do him up; that as he started to leave the office he turned around and told Greenhut that he had lied about the Moreno acceptance, and that Greenhut then struck him and he pushed him away, and as he rushed upon him again he drew his pocket knife and cut Greenhut in self-defense.

Greenhut, in his affidavit, says that O'Neal went in his office with him, where he kept and had the custody of the papers, books, etc., relating to and connected with the books of said Moreno, bankrupt; that he asked him, Greenhut, why he had commenced the action against the American National Bank, and made the remark that he would settle with him, or will settle the matter, and that O'Neal then started to walk out, and that Greenhut, not knowing of his purpose, followed. That when at the doorway O'Neal, without any provocation, turned and wheeled suddenly about with his knife in his hand and struck at his (Greenhut's) throat, cutting him at a point behind the left ear, cutting through a portion of it, thence across the left cheek to the corner of the mouth, stabbed him four times, inflicting serious injuries upon him which prevented him from attending to his duties as a trustee. Seventeen or eighteen days after this assault the said Greenhut filed in Judge Swayne's court an affidavit of which the following is a copy:

"UNITED STATES OF AMERICA,

"*Northern District of Florida, City of Pensacola, ss:*

"Adolph Greenhut, of the city of Pensacola, in the district aforesaid, being duly sworn according to law, on his oath doth depose and say:

"That theretofore, to wit, on the 29th day of August, 1902, one Scarritt Moreno filed in the honorable the district court of the United States in and for the northern district of Florida, at Pensacola, his petition to be adjudicated a bankrupt and to obtain the benefits of the acts of Congress of the United States relating to bankruptcy. That thereafter such proceedings were had upon said petition in said United States district court that on September 15, 1902, affiant was duly appointed trustee of the estate of the above-named Scarritt Moreno, bankrupt, which said appointment of deponent as trustee was then and there approved by the said court.

"Thereafter, to wit, on the day and year last aforesaid, affiant accepted said appointment and filed his bond as such trustee, which said bond was duly approved by E. K. Nichols, esq., referee in bankruptcy, and at the same time deponent took the oath of office as required by law, and thereupon he became charged with the duties and clothed with the authority appertaining to a trustee in bankruptcy under the laws of the United States, and from thence hitherto has occupied and is now occupying said trusteeship, amenable to and subject to the orders of the said the honorable district court of the United States in and for the northern district of Florida.

"That affiant was, by his counsel, advised that it was his duty as trustee of the estate of said Scarritt Moreno as aforesaid to institute a certain suit or action in equity for the purpose of having certain property purchased by the said Scarritt Moreno, bankrupt, the title to which was taken by the said Scarritt Moreno in the name of his wife, brought into the said United States district court as a part of the estate of said bankrupt, to be there administered as required by law, and for the further purpose of having certain mortgages on said property decreed and declared to be null, void, and of no effect. That thereupon in the afternoon of Saturday, the 18th day of October, 1902, through his counsel, he, as trustee as aforesaid, and in the performance of his duty as aforesaid as an officer of the said United States district court, caused to be filed in the circuit court of Escambia County, State of Florida, his certain bill of complaint, therein and thereby, among other things, asking the relief above referred to.

"That by the advice of his counsel, Scarritt Moreno, Susie R. Moreno, his wife, the American National Bank of Pensacola, the Citizens' National Bank of Pensacola, and others were made parties defendant in and to said bill of complaint, and that upon the filing of the said bill of complaint suit was commenced against the defendants named in said bill of complaint. That all of the proceedings above referred to were taken and had by affiant as an officer of the district court of the United States in and for the northern district of Florida, and in the due, proper, and faithful performance of his duty as such officer, and were necessarily had and taken under the law and his oath of office.

"That on Monday, the 20th day of October, A. D. 1902, between the hours of 9 and 10 o'clock a. m., affiant was standing in the door of the office of the store owned and conducted by him, situated at No. —— East Government street, in the city of Pensacola aforesaid, which said office was occupied by deponent, among other things, for the purpose of performing the duties devolving upon him as trustee as aforesaid, and in which said office this deponent kept and had the custody of the papers, books, etc., relating to and connected with the estate of said Scarritt Moreno, bankrupt, in deponent's hands as trustee as aforesaid; that at the said time deponent was engaged in conversation with one Alex Lischkoff, when one W. C. O'Neal, who was at the said time president of said American National Bank of Pensacola, one of the defendants in the action or suit heretofore referred to, approached to where affiant was standing and conversing as aforesaid, and stated to affiant that as soon as he, affiant, was at liberty, he, said O'Neal, desired to speak to him. Thereupon affiant stated in effect that said O'Neal could speak to him then, and affiant entered his said office and stood alongside of a standing desk about 5 feet from the door of said office.

"Said O'Neal followed affiant into said office and stood opposite to affiant, and distant only a few feet. That thereupon said O'Neal in effect asked this affiant why he, affiant, had brought the name of his, the American National Bank, into the Moreno suit (meaning thereby the suit above referred to, brought by affiant, as trustee, against Scarritt Moreno and others); that affiant replied that he, O'Neal, could see his, affiant's, attorneys in relation thereto; that said O'Neal made some remark to the effect that he would not do so, and stated to affiant that he, affiant, was no gentleman; that affiant thereupon said that he, affiant, was as much of a gentleman as he, the said O'Neal; that thereupon said O'Neal said 'We'll settle the matter,' and turned about as if he intended to leave the premises of deponent, walking toward the door of said office and out upon the sidewalk; that affiant had no thought, idea, or suspicion that said O'Neal intended any personal violence toward him, and quietly started forward from where he was so standing as aforesaid toward the door of said office leading into the street.

"That affiant barely reached the doorway of said office when said O'Neal, without any provocation, without any notice to deponent of his murderous intention, turned and wheeled suddenly about with his knife in his hand, and, with intent to kill and murder deponent, struck at his, deponent's, throat with said knife, and cut deponent at a point be-

hind the left ear, cutting through the lower portion of said left ear, then across the left cheek, ending at left corner of mouth; and immediately thereafter said O'Neal cut and stabbed deponent four further times: (1) On left side over lower ribs, (2) upon left hip, (3) on left elbow, and (4) on right hand. That the cuts, wounds, and stabs so inflicted by said O'Neal upon deponent were of a serious and dangerous character, and from said time to the present deponent has been unable to attend to and perform his duties as trustee as aforesaid, and has been confined to his home, except for a few hours on two or three different days, and has ever since been and is now under the care and treatment of a physician who is attending to said wounds.

"That said assault and attempt to murder was committed by said O'Neal as aforesaid solely because and for the reason that affiant, as an officer of the United States district court in and for the northern district of Florida, had instituted the suit above set forth against the said American National Bank and others, and to interfere with and to prevent deponent from executing and performing his duties as such officer of said court; and the said O'Neal did, by the said murderous assault, interfere with the management of the said trust by deponent as an officer of the said court, and did for a long period of time, to wit, from the said 20th day of October, 1902, up to the present time, by reason of the injuries inflicted by him upon deponent as aforesaid, prevent and deter deponent from performing the duties incumbent upon him, deponent, as such officer, and did thereby interfere with the management by deponent as such officer of the estate of the said Scarritt Moreno, bankrupt.

"A. GREENHUT.

"Sworn to and subscribed before me this 7th day of November, A. D. 1902.

"E. K. NICHOLS, *Referee in Bankruptcy.*"

To this affidavit O'Neal filed an answer, a copy of which is as follows:

"And thereafter, and in the said day, to wit, on the 22d day of November, A. D. 1902, the following answer was filed in the said cause by the respondent therein, to wit:

"In United States district court, northern district of Florida, at Pensacola. In re rule upon W. C. O'Neal to show cause why he should not be punished for contempt upon the statement set forth in the rule and the affidavit of A. Greenhut, thereto attached.

"Respondent, for answer to the rule and to the said affidavit, says:

"1. That he knows in part and presumes in part that the allegations of the first paragraph of the said affidavit are true.

"2. That he knows in part and presumes in part that the allegations of the second paragraph of the said affidavit are true.

"3. That the statements in the third paragraph of said affidavit are in part true and in part untrue, and that the following statement of the facts leading up to, accompanying, and surrounding the affray be tween himself and the said Greenhut on October 20, 1902, are true:

"That the said Greenhut had been, from the organization of the American National Bank, of Pensacola, in October, 1900, a stockholder and director thereof; that while he was such stockholder and director the said bank received from the said Scarritt Moreno a certain mortgage for the sum of $13,000, to secure certain indebtedness due or to become due by the said Moreno to the said bank; that the said transaction was an honest and bona fide transaction, and that the said Scarritt Moreno was and became indebted to the said bank in a large sum of money secured by the said mortgage; that the said Greenhut was cognizant of the whole of said transaction and knew of its bona fides and honesty, as he did of the subsequent bona fide transfer thereof to Alex McGowan, S. J. Foshee, and H. L. Covington for a large consideration paid by them to the said bank, and that the bill filed by the said Greenhut as trustee as aforesaid, was filed to declare the said mortgage and transfer null and void, although the said Greenhut knew them to have been entirely honest, straight, and valid transactions.

"That prior to the said 20th of October said A. Greenhut became indorser upon certain negotiable paper of the said Scarritt Moreno to the said bank to an amount of about $1,500; that the said Greenhut refused to make good his said indorsement or to pay to the said bank the money due upon said paper at its maturity or thereafter, and before the said 20th day of October the said bank had been compelled to sue him in the circuit court of Escambia County, Fla., upon said paper, and that in the said suit the said Greenhut interposed a defense which this respondent believed and believes to be untrue and known to the said Greenhut to be untrue.

"That on the morning of the 20th of October, 1902, respondent was proceeding from his residence to his office in the said bank, in the direct and usual path pursued by him, and he saw the said Greenhut standing at the door of his said store office upon the said path of respondent, and it suddenly occurred to respondent to reproach the said Greenhut with having brought the suit mentioned in his affidavit against the said bank, when he, the said Greenhut, knew as aforesaid that there was no foundation therefor; and thereupon the respondent stated to the said Greenhut that he wished to speak to him as soon as he was at liberty, he then being engaged in a conversation with one A. Lischkoff. The said Greenhut answered that respondent could speak to him then, and both he and respondent stepped to the rear of the said Greenhut's office, when the respondent reproached the said Greenhut with his attitude toward the bank, of which he had been a stockholder and director, both in his refusal to pay the negotiable paper hereinbefore mentioned and in the bringing of an unfounded suit against it; the conversation, however, concerning chiefly the bringing of the said suit against the said bank. Hot words passed between the said respondent and said Greenhut, during which the said Greenhut said that he would 'do respondent up,' to which respondent answered that he did not come to have a disturbance and would not fight in his office except in self-defense, but that if he had to fight he would do so if the said Greenhut would come out upon the street.

"When the respondent turned to leave the office and when he had nearly reached the door, he turned and said to the said Greenhut, 'Well, you know how you lied about the Moreno acceptance, for you said that you would pay it,' the Moreno acceptance being the negotiable paper hereinbefore mentioned. As respondent turned, saying this, he noticed that the said Greenhut was following him, and as he said it the said Greenhut, who was short, stout, heavily built, and apparently much more muscular than respondent, struck the respondent, who is thin and feeble, and forced him against the railing in the said office. The respondent shoved the said Greenhut a little away from him, but he, the said Greenhut, instantly recovered and rushed at respondent with his arm uplifted to strike, when respondent drew from his pocket a small pocketknife and opened it, in order to protect himself, and upon said Greenhut rushing upon him, cut him therewith, while the said Greenhut was still following and endeavoring to strike him.

"That it is not true that the respondent at any time said to the said Greenhut that he, respondent, would settle the matter, but the facts are as hereinbefore stated; that respondent does not know how many or where located were all the wounds inflicted with said knife and hence he is unable to admit or deny the allegations of the said affidavit relating thereto; that it is not true that the use of the said knife was with the intent to kill and murder the said Greenhut or to do him any bodily harm, but respondent avers that it was entirely from the instinctive desire of respondent to defend himself from the attack of a larger and more powerful man.

"That it is not true that the assault charged in the said affidavit was committed by the respondent solely because and for the reason that the said Greenhut had instituted the suit aforesaid against the said American National Bank, or to interfere with and prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court; that in truth the respondent never contemplated at any time any interference with the said Greenhut as trustee as aforesaid, or contemplated any affray with the said Greenhut, or any personal conflict with him until he saw the threatening attitude of the said Greenhut toward him, the respondent, as hereinbefore set forth, and that so far as respondent can determine from the actions of the said Greenhut, who was the aggressor as aforesaid, the cause of the said affray was the remark of respondent to the said Greenhut concerning the said Greenhut's action in repudiating his obligation to pay the said acceptance.

"And respondent disclaims the existence on his part at any time of any intent to interfere with, prevent, impede, or delay the said Greenhut in the prosecution of the said suit against the said bank, or to interfere with or impede or prevent him in any wise in the execution or performance of any of his duties as such trustee, and specially disclaim any intent to do any act which might savor in the slightest degree of contempt of this honorable court.

"W. C. O'NEAL.

"W. C. O'Neal, being duly sworn, says that he has read the foregoing answer and that the statements therein made are true.

"W. C. O'NEAL.

"Sworn and subscribed before me this 18th day of November, A. D. 1902.

[SEAL.] "JNO. PFEIFFER, *Notary Public.*

"On the 9th day of December the matter came on for trial, and the court, after hearing all of the evidence and all of the witnesses, rendered the following judgment:

"And afterwards, to wit, on the 9th day of December, A. D. 1902, the following proceedings were had in open court, to wit:

"In the matter of the rule upon W. C. O'Neal to show cause why he should not be punished for contempt of this court as to the matters and things set forth in the affidavit of Adolph Greenhut.

"This cause coming on to be heard at this time on the affidavit of Adolph Greenhut, in the matter of the bankruptcy proceedings in the estate of Scarritt Moreno, and upon the rule to show cause why he should not be punished for contempt of this court issued thereon by this court against W. C. O'Neal, and upon the answer of the said respondent, W. C. O'Neal, to the said rule and affidavit, and the court having heard the testimony and the witnesses for the prosecution and for the respondent, and after argument of counsel and consideration by the court, and the court being advised in the premises, the court doth find as follows:

"That the affidavit of Adolph Greenhut, upon which this rule was granted, is true, and that the respondent is guilty of the acts and things set forth therein, in the manner and form therein alleged, and that the same constitute and are a substantial contempt of this court; and it is therefore

"Ordered, adjudged, and directed that the said respondent, W. C. O'Neal, be taken hence to the county jail of Escambia County, at Pensacola, in the State of Florida, and there confined for and during the period of sixty days, and that he stand committed until the term of this sentence be complied with or until he be discharged by due process of law.

"And the said respondent, W. C. O'Neal, at this time having sued out his writ of error to the Supreme Court of the United States, and made and entered into a bond and undertaking, conditioned as required by law, and duly approved by this court, it is therefore ordered that the said writ of error be and operate as a supersedeas to the judgment heretofore rendered in this cause."

There is no evidence that Judge Swayne acted arbitrarily in the matter, that he was oppressive, or that he wrongfully and willfully in defiance of law tried the action and pronounced judgment. The majority of the committee contend that there is no law to warrant the decision of the court; that no contempt had been committed; that the judge was in error; and for these reasons and because he made a mistake in the law, because he rendered an erroneous judgment he should be impeached.

The judge certainly had the right to pass on the credibility of the witnesses and certainly had the right to believe Greenhut's statement in preference to that of O'Neal's, and if the evidence supported the allegations of Greenhut's affidavit—and the judge found that it did—then he had the right under the law, in my judgment, to find O'Neal guilty of contempt.

A trustee in bankruptcy, under the bankrupt act, is made an officer of the court. It is his duty, under an order of the court appointing him, to commence any actions necessary to recover property belonging to the bankrupt, and when he commenced such an action he is acting as an officer of the court and under its orders, or he would have no right to commence and prosecute the action at all. And any interference with him, either in the commencement of the action or in its prosecution, is a resistance by a party to a lawful order of the court and clearly falls within the express language and meaning of section 725 of the Revised Statutes. The action of O'Neal was not only to reproach Greenhut, but to frighten and terrorize him and to interfere with him in the lawful discharge of his duties as trustee and as an officer of the court.

Is it possible that the court may direct its trustees and officers to commence an action to recover assets to be distributed by the court to creditors and can not punish for contempt a party who stands in the street blocks away from the court-house and by force of threats intimidates the trustee so that he, through fear of personal violence, dare not commence his action? Surely such can not be the law, and such is not the law. What are the decisions on this question?

In the case of the United States *v.* Anonymous, reported in volume 21, Federal Reporter, page 761, it is held that "it is a contempt of court to

interrupt and violently break up the examination of a witness before an examiner by persisting in the claim to dictate, prompt, and control the answers of the witness. It is also a contempt to insult the examiner by use of violent and abusive language to him after he has left the office and is upon the street. Nothing in the Revised Statutes, section 725, has taken away the power of the court to punish such contempts."

The court, on page 771, uses this very strong language, which applies with great force to the O'Neal case. It says:

"The privilege of protection to all engaged in and about the business of the court from all manner of obstruction to that business, from violence, insult, threats, and disturbance of every character is a very high one, and extends to protect the persons engaged from arrests in civil suits, etc. It arises out of the authority and dignity of the court and may be enforced by a writ of protection, as well as by punishing the offender for contempt."

The court further on says if the misbehavior was not in the presence of the court, or so near thereto as to obstruct the administration of justice, it was nevertheless the disobedience or resistance by a party to a lawful order, decree, or command of the court.

In the case of In re Higgins, reported in volume 27, Federal Reporter, page 443, it is held that receivers are sworn officers of the court, and their agents and servants in operating the railway are pro hac vice the officers of the court, and that it is well settled that who unlawfully interferes with property in the possession of the court is guilty of contempt of that court, and it is equally well settled that whoever unlawfully interferes with officers and agents of the court in the full and complete possession and management of property in the custody of the court is guilty of a contempt of the court, and it is immaterial whether this unlawful interference comes in the way of actual violence or by intimidation and threats. To the same effect are the cases of In re Acker (66 Fed. Rep., 290), and In re Tyler (149 U. S., 181).

One of the most interesting decisions on this question of the power of the court to punish for contempt is by Judge Jones, of Alabama, and reported in volume 120, Federal Reporter, page 130, ex parte McLeod. This case discusses the causes that led up to the enactment of section 725, Revised Statutes. The court holds that "an assault upon a United States commissioner because of past discharge of duty is a contempt of the authority of the court, whose officer the commissioner is, in the administration of criminal laws, although no proceeding against the offender was then pending and the commissioner at the time was not in the performance of any duty."

This must be so. The court must have its officers to enforce and carry out its decrees, to enforce and protect the rights of litigants, to preserve peace and good order, and to assist it in the performance of those duties which are imposed upon it by law. The judge himself is only an officer of the court, and, indeed, the court would be weak that had no power to punish a party for contempt who interfered with one of its officers for the purpose of preventing him from discharging his duty as an officer of the court, as trustees, or receivers. If trustees, commissioners, and other officers of the court are to be deterred in the performance of their duties by reason of violence or threats, if they may be assaulted and stabbed because they are carrying out the mandates of the law, then we will have no law, no order, no security, no protection of person or property.

It is necessary for the peace and good order of the law and of society that a trustee in bankruptcy may, without fear, commence actions in the courts to recover property which belongs to creditors. It is also necessary that after the action has been commenced that he shall not be terrorized to the extent that he dare not prosecute further. His duties are, among other things, to collect and reduce to money the property of the estate for which he is a trustee, under the direction of the court, and there is vested in him title to all of the property belonging to the bankrupt, including property transferred by the bankrupt in fraud of creditors. In trying to declare the deed of Moreno to his wife and the mortgages therein as void in the suit which he commenced, Greenhut was "acting, under the direction of the court," or, in other words, under its order, as its officer; and when Mr. O'Neal went into his office to reproach him for commencing this suit and used violence upon him he was resisting and interfering with an officer of the court in the performance of an order of the court, and was guilty of a contempt. Being guilty of a contempt, Judge Swayne's duty was to punish him therefor, and he would not have been mindful of the peace and good order of his court and the due administration of justice therein if he had not done so.

But the majority contend that "the answer of O'Neal purged the contempt, and it was error to punish him for it," and therefore the judge should be impeached. We can not agree to this for two reasons: First, the answer does not purge the contempt, and, second, growing out of an equity proceeding, the court had the right to inquire into and pass upon the merits.

In proceedings for criminal contempt the answer of the respondent in so far as it contains statements of fact must be taken as true. If false, the Government is remitted to a prosecution for perjury. This is the common-law rule. But the answer must be credible and consistent with itself, and if the respondent states facts which are inconsistent with his avowed purpose and intent the court will be at liberty to draw its own inferences from the facts stated. (In re May, 1 Fed., 737; In re Crossley, 6 Term R.; Ex parte Nowlan, 6 Term R.; U. S. v. Sweeny, 95 Fed., 447; In re Debs, 64 Fed., 724.)

"Disclaimer of intentional disrespect or design to embarrass the due administration of justice is, as a rule, no excuse, especially where the facts constituting the contempt are admitted or where a contempt is clearly apparent from the circumstances surrounding the commission of the act. (Cyclopedia of L. & P., vol. 9, 25.)"

Courts may make inquiry as to the truth of the facts notwithstanding the answer denies fully the allegations of the affidavit, statement, or petition and disclaims any intention to do any act in contempt of the court. (Territory v. Murray, 7 Mont., 251; Crow v. State, 24 Tex., 12; State v. Harper Bridge Co., 16 W. Va., 864; U. S. v. Debs, 64 Fed., 724; In re Snyder, 103 N. Y., 178; 48 Conn., 175; 19 Fed., 678.)

The law as above stated is clearly applicable to the answer filed by O'Neal.

He admits that he knew that Greenhut had been appointed trustee. He admits that he knew that Greenhut as such trustee had commenced an action to recover assets which it was alleged belonged to the bankrupt and which he was endeavoring to cover up by fraud. He admits that the bank of which he was president was a party defendant in this action, and he admits that "it suddenly occurred to him to reproach the said Greenhut with having brought the suit against the said bank." He also admits that when he entered Greenhut's office he reproached the said Greenhut for bringing an unfounded suit against the bank; "the conversation, however, concerning chiefly the bringing of the said suit against the said bank," and that hot words passed between them and that he invited Greenhut into the street to fight. He says "that it is not true that the assault charged in the said affidavit was committed by respondent solely because and for the reason that the said Greenhut had instituted the suit against the said American National Bank, or to interfere with or prevent him, the said Greenhut, from exercising and performing his duties as an officer of this court."

He says that the assault was not made solely for that reason, but he does not deny that that was one of the reasons, and thereby admits that it was.

Having made an affidavit in which he admits so much, the court could well find that it was inconsistent with his claim that he had no intent to commit any contempt or to interfere with Greenhut in discharging his duties as trustee. In fact, nowhere does it appear that O'Neal ever asked to be dismissed because he had fully purged himself of contempt by his answer.

But the action commenced by Greenhut, being an equitable action, and his duties as trustee being more as an officer in equity than one at law, the court had the right to inquire into the merits even if O'Neal filed an affidavit fully and completely purging himself of the contempt charged, a different rule obtaining in equity than at law. (Buck v. Buck, 60 Ill., 105; 114 Mass., 230; 37 N. H., 450; 48 Conn., 175.)

When O'Neal was found guilty of contempt he took a writ of error to the Supreme Court of the United States and the cause was dismissed. Then he sued out a writ of habeas corpus before Judge Pardee, and on the 10th of November last the court, Judges McCormick and Shelby concurring, dismissed the writ. This decision is reported in volume 125, Federal Reporter, page 967.

The court says:

"The charge of contempt against the relator is based upon the fact that he unlawfully assaulted and resisted an officer of the district court in the execution of orders of the court and in the performance of the duties of his office. Under such orders, and in that respect, it would seem to be immaterial whether at the time of the resistance the court was actually in session with a judge present in the district, or whether the place of resistance was 40 or 400 feet from the actual place where the court was actually held, so long as it was not in the actual presence of the court, nor so near thereto as to embarrass the administration of justice.

"Under the bankruptcy act of 1889, section 2, the district courts of the United States, sitting in bankruptcy, are continuously open; and, under section 33, and others of the same act, a trustee in bankruptcy is an officer of the court. The question before the district court in the contempt proceedings was whether or not an assault upon an officer of the court, to wit, a trustee in bankruptcy for an account of and in resistance of the performance of the duties of such trustee, had been committed by the relator, and, if so, was it under the facts proven a contempt of the court whose officer the trustee was. Unquestionably the district court had jurisdiction summarily to try and determine these questions, and having such jurisdiction, said court was fully authorized to hear and decide and adjudge upon the merits."

If O'Neal was guilty of the matters charged against him, and there was sufficient proof of that fact as shown both by Greenhut's affidavit and his own, then there is no doubt that he was guilty of contempt.

Judge Swayne having been fearless enough on the proof of these facts to find a banker and an influential citizen guilty of contempt, the majority in their report say, on page 20, that "Judge Swayne's action was, to say the least, arbitrary, unjust, and unlawful. It could have proceeded only from either willful disregard of the law or from ignorance of its provisions."

If the court has no power to punish those for contempt who beat, assault, and intimidate its officers when discharging their duty, then what protection have they, and how will the law be enforced? If a sheriff can not serve a process without being beaten, if a clerk can not file a paper without being threatened, if a juror can not proceed to hear a case without interference, and if a trustee can not commence an action without being stabbed, and neither have any right to appeal to the court for protection, then men will not be found who will discharge their duties; and if a judge dare to punish for contempt for the doing of any of these things he lays himself subject to impeachment and to be charged with tyranny, oppression, and ignorance, and his acts characterized as being "arbitrary, unjust, and unlawful."

But the majority in their report in this matter give their whole case away. They say, on pages 20 and 21, "O'Neal did not assault Greenhut because Greenhut had sued the bank, but because he had sued the bank knowing that his contention was false."

Here is an admission that O'Neal did assault the trustee, and that the assault grew out of the action that Greenhut commenced against O'Neal's bank, but the assault is sought to be justified because O'Neal claimed that the suit was an unfounded one and Greenhut knew it. The question of whether or not a suit is well founded is always a question for the court before whom the action is pending. If a defendant has the right to walk into the office of a receiver, trustee, executor, or administrator and stab him and try to cut his throat, and justify his action by claiming that a suit brought against him by such officer is unfounded, then how can the court protect its officers in the discharge of their duties? Happily no such right as this exists under the laws of this or any other civilized nation.

In punishing O'Neal Judge Swayne did his duty. Out of this trouble grew this impeachment proceeding. O'Neal at once started in to get even on the court, and the evidence shows that he employed lawyers to go to Tallahassee and lobby through the resolution passed by the legislature of the State of Florida. The two most prominent lawyers now prosecuting this matter, Mr. Liddon and Mr. Laney, admit that they were employed by O'Neal to lobby this resolution through.

There is considerable feeling of prejudice and malice in this proceeding, and it is well to be careful and not be influenced by it, to the end that no mistakes are made and no injustice done.

BELDEN AND DAVIS.

Third. The majority are of the opinion that Judge Swayne should be impeached because he found one Davis and one Belden guilty of contempt. With this we can not agree; neither can we agree with the statement of facts set forth in Mr. PALMER'S report, as important matters are omitted which put a very different phase to the transaction.

The trouble grew out of the following facts: In February, 1901, Florida McGuire commenced an action in Judge Swayne's court to recover about 200 acres of land known as the "Rivas tract." This tract of land is described as one body, though it is divided into lots and blocks and owned by a number of people. On this tract is a block

known as block 91 of the new city, but there is nothing in the said description of the tract of land that would show this fact. In the summer of 1901 Judge Swayne's wife was negotiating with a real-estate firm for the purchase of several pieces of land, one of which was said block 91. This block was owned by a Mr. Edgar, who lived in New York, and upon whom service of summons had never been made in the said Florida McGuire suit. Mr. Edgar made a deed in favor of Mrs. Swayne and sent it to Thomas C, Watson & Co., the agents above named. Mr. Hooten in July, 1901, wrote to Judge Swayne that he had received the deed, but it was not a warranty deed, as Edgar was afraid of the Caro claim. To this letter Judge Swayne replied as follows:

"Gentlemen, you may omit block 91 and send papers for the others along, and oblige."

This ended the negotiations of Judge Swayne's wife to purchase said block. Afterwards it was sold to the Pensacola Improvement Company, and neither Judge Swayne nor his wife ever owned it or were ever in possession of it. Before the commencement of the November term of court the attorneys for the plaintiff in the Florida McGuire suit requested Judge Swayne, by letter, to recuse himself, as he owned an interest in the property in dispute. The judge did not answer this letter. On November the 5th, when court opened, the judge brought this matter up in the presence of the attorneys for plaintiff, Florida McGuire, and stated that he had received a letter from them asking him to recuse himself because he had purchased a piece of land which was a part of the land embraced in the Florida McGuire case. (Testimony of W. A. Blount; Mr. PALMER states they had no notice.)

"The judge stated he had not purchased any such land; that his wife through him had negotiated for the purchase of a block of this tract, but when the deed was sent to close the trade he saw it was a quitclaim, and he asked why a warranty deed had not been given. The reply by Watson & Co., Edgar's agents, was the reason a warranty deed was not given was because this land was in controversy in this suit and he did not care to give a warranty. Judge Swayne, learning this, caused the deed to be returned, and as no formal demand had been made of him to recuse himself, he would try the case."

The foregoing is the statement of W. A. Blount, Florida's foremost attorney, who was in the court at that time. The criminal calendar was taken up first, and the court informed the parties that he would take up the civil docket right after the criminal calendar. The only case on the civil docket was the case of Florida McGuire. A jury was in attendance. During the week the attorneys for Florida McGuire informed W. A. Blount, attorney for defendants, that they were ready. All of their witnesses were in Pensacola and easy to reach. Saturday morning it was apparent that the last criminal case would be finished that day, and Mr. Blount took out a subpœna for his witnesses. Again I quote from the testimony of Mr. Blount:

"The first we knew that they would not be ready was the application by Judge Paquet for a postponement of the case to Thursday. I objected very strenuously. I had tried the same issue eleven times. I called the court's attention to the fact that my knowledge of the witnesses and the issues led me to believe that 90 per cent of the witnesses were in half-hour call of the court room; there was no reason for delay. The court took that view, would not call it then, but would call it Monday, unless there was an application for a continuance in accordance with the rule."

That night, Saturday, after the court had refused to postpone the case, Davis, Belden, and Paquet, attorneys for the plaintiff, Florida McGuire, met together in a store of one of their clients, and there discussed the question of suing Judge Swayne and decided to do so. Belden admits he was present at this meeting, though the majority report says, page 8, "The papers were taken to Simeon Belden, into his hotel, where he was ill, and he signed them." The following are the facts as sworn to by Belden:

"A. I was at the Park Hotel a short time, and they sent for me to come down to Judge Paquet.

"Q. Where was he?—A. At Mr. Pryor's store, I think; I went there and signed the papers and left. It was a suit against Judge Swayne for the recovery of that property."

The suit was commenced after 8 o'clock at night in the circuit court of Escambia County, Fla., after the clerk had gone home, and the statement was made to him that the writ must be served that night at all hazards. After the writ was issued the sheriff was hunted up and instructed to serve Judge Swayne with it that evening. These attorneys also, in carrying out their scheme, wrote an article for the paper, to be published next morning—Sunday—stating that the suit had been brought and the object of it, and procured its publication.

The majority in their report say that they did not procure its publication, but the evidence is positive that they did. The suit was won in ejectment to recover from Judge Swayne block 91 and mesne profits amounting to $1,000, and all three of these parties well knew that Judge Swayne had never owned the land and had never been in the possession of it. Judge Belden claimed that the land was Lydia C. Swayne's, and Mr. Davis, in his petition for a writ of habeas corpus, stated the same fact. It was open, unimproved land. The action was not commenced in good faith with the intention of prosecuting it, and nothing more was ever done with it. If the parties had been acting in good faith they certainly would have sued Mrs. Swayne, whom they claimed to be the owner of the land, and not Judge Swayne, who had never negotiated for it. When forced to state what caused them to act in this great haste, they gave as an excuse that they were afraid that Judge Swayne would leave before they could get service upon him. Monday forenoon Judge Blount talked the matter over with Judge Swayne, and he, acting on his own suggestion, prepared the papers upon which Davis and Belden were found guilty of contempt.

At the trial Judge Swayne said, so states Mr. Blount in his evidence, that he had no doubt that the people in the city had a right to sue him, but the circumstances showed it to be an attempt to influence a United States judge in his duty by putting him where he would have to declare himself disqualified, and knew he had so announced, and had no reason to believe so. Before Davis and Belden were cited for contempt they dismissed the Florida McGuire suit. They probably heard contempt proceedings were being started. They claim now that Saturday evening they had decided to dismiss the case pending before Judge Swayne. But if this is a material fact in the case, it could only have been such by calling Judge Swayne's attention to it at the time of the contempt proceedings, which they did not do. As far as the court knew, no intention of that kind ever existed. It was not sworn to, was not put in their answer, and was mentioned in no way when it ought to have been, and it seems rather late in the day to make that claim now.

Mr. Davis claims that he was not retained in the Florida McGuire suit until Sunday, after the suit against Judge Swayne had been commenced, and the majority in their report say that "E. T. Davis was not of counsel in the case and had no connection with it up to the time that court adjourned on Saturday, November 9, at 6 o'clock." We believe that Davis was retained and was connected with the suit before Judge Swayne was sued, and had been for some time, and the evidence clearly establishes that fact beyond all doubt. J. C. Keyser was interested in the suit on behalf of plaintiff; in fact, he was one of the plaintiffs, though his name did not appear of record. He said, when asked what attorney asked Judge Swayne to recuse himself, "I think Mr. Davis and General Belden."

On page 250 Mr. Marsh, the clerk of the court, says:

"I don't think any præcipes had been gotten out. I had told Mr. Davis I would wait as late as he desired to get them out. He did not seek any præcipes.

"Q. Was Mr. Davis in the case, then, that Saturday afternoon?—A. Yes."

On page 278 Mr. Belden says:

"After receiving the telegram from Judge Pardee, Mr. Davis was to make up the record in the case, so if there was error we could appeal it—take it up by writ of error. We intended to proceed, but the judge calling the case Saturday evening, 9th of November, refusing to allow us time to get our witnesses before the court, we were deprived of the facilities of making up such a record as Judge Pardee contemplated we should make, and we had to discontinue it."

Here is a positive statement by Mr. Belden that Davis was in the case before Swayne was sued:

Mr. Paquet says, page 423, that "Davis was brought into the suit on Saturday, November 9, before Judge Swayne was sued; that he was one of the advising counsel of the clients, that he was associated, and asked if I had any objections; during the week he was in court very frequently, advising with some of the plaintiffs."

Davis also admits in his petition for a writ of habeas corpus that he was an attorney for plaintiffs, a copy of which writ is as follows:

"United States circuit court, fifth judicial circuit, ex parte Elza T. Davis, habeas corpus.

"The relator in this case, Elza T. Davis, comes into court and excepts to the consideration of what is filed herein as a certificate of Charles Swayne, judge, without date, because it contains charges and statements amounting to charges of contempt against this defendant not contained in motion and order charging contempt, and which statements and charges he has never been ordered to answer, or in any way given a chance of reply to.

"Should this exception be overruled then defendant, with permission of court first had and for which he prays, says:

"That on the 5th of November, 1901, in open court of the United States circuit court of the northern district of Florida, Charles Swayne, United States district judge presiding, in answer to a letter from this defendant and Louis P. Paquet, of counsel for Mrs. Florida McGuire, of date October 4, 1901, to said judge at Guyencourt, in the State of Delaware, requesting him to recuse himself on the trial of the suit of Mrs. Florida McGuire *v.* Pensacola City Company et al., among other reasons, because of his interest in the said suit pending before him, refused to recuse himself, and went on to state from the bench in open court that a relative of his had purchased a part of the said land in litigation before him in said suit of Mrs. Florida McGuire, that the deeds had been sent north to him (the judge), and that he had returned them.

"Second. In the second paragraph of the judge's certificate he mentions the desire of his wife to purchase block 91, being the block that he is sued for in the State court, but he has not stated as fully as he did in open court on the 11th of this month the facts in reference to said purchase. On said date, 11th November, 1901, said judge stated in the hearing of all present, this relator and Simeon Belden, also counsel for Mrs. McGuire being present, that the relative referred to in his statement from the bench in open court on the 5th of November "is his wife;" that she purchased said block of ground on the Rivas tract with her own money; that finding that it was on the "Rivas" tract in litigation before him he returned the deed. At no time has he ever stated or furnished us any proof that said sale had been resolved at his request or by his wife's vendor, or that his wife, who purchased the same with her own money, desired it canceled.

"Third. In paragraph 5 in said judge's certificate the facts in reference to trial of suit of Florida McGuire *v.* Pensacola City Company et al., the material facts are suppressed. They are as follows: The criminal term of said court ended Saturday, late in the evening of November 9, when said judge announced that he would take up the trial of the McGuire case the following Monday at 10 o'clock a. m. The case had never been fixed for a day to which we could have our witnesses summoned, and we therefore asked the court to allow us until the following Thursday to get our evidence in the case. The judge seemed willing, but counsel for defendant, W. A. Blount, and who is also one of the defendants in the McGuire suit, which is an ejectment suit, with much warmth insisted on the trial on Monday, November 11, to which the judge acquiesced.

"This was Saturday, 9th, after office hours; next day being Sunday, no summons for witnesses could issue, thus having only from the opening of clerk's office at 9 o'clock Monday, 11th, until 10 o'clock, opening of court (one hour) to issue summons and serve more than fifty witnesses, which was physically impossible. While we were satisfied that said judge is interested in the result of said suit, still he refused to recuse himself, our intention was to try the case before him had he fixed a day for trial so that we could have secured our evidence thereto and made our record, but when thus arbitrarily cut off therefrom our duty to our clients was to discontinue the suit to prove their rights, which discontinuance of said suit, upon motion, was ordered by Judge Swayne at 10 o'clock on the morning of November 11, 1901, and after which the motion of rule for contempt was inaugurated by W. A. Blount, attorney, and a defendant.

"Fourth. In paragraph 7 of said certificate said judge refers to consultation with some members of the bar, but does not name them, but finally selects W. A. Blount to call the matter of contempt before the court, assisted by W. Fisher, of whom are defendants in the suit of Mrs. McGuire *v.* Pensacola City Company et al., and trespassers on a large portion of the land in question. Now, while there is no act charged against us which under the law we were not entitled to do, still we make reply to statements and certificates, to place it beyond doubt, that we have acted strictly within the line of our sworn duty to our clients, which we have a right to do under the law, and there can be no contempt, and no contempt was ever intended or thought of, in suing Charles Swayne in a State court, and especially is it so demonstrated by a discontinuance of suit in Federal court.

"OATH.

"Elza T. Davis, being duly sworn, deposes and says that all the facts and allegations recited in the foregoing exception and statement are true and correct, to the best of his knowledge and belief.

"E. T. DAVIS.

"Sworn to and subscribed before me this 23d of November, 1901, at the city of New Orleans, La.

[SEAL.] "BENJAMIN ORY,

"*Notary Public for the Parish of Orleans, La.*

"(Indorsed:) United States circuit court, fifth judicial circuit, northern district of Florida, ex parte Elza T. Davis applying for writ of habeas corpus. Exceptions and statement of relator received and filed November 23, 1901. H. J. Carter, clerk. Filed December 10, 1901. F. W. Marsh, clerk.

"NORTHERN DISTRICT OF FLORIDA, *ss:*

"I, F. W. Marsh, clerk of the circuit court of the United States for the northern district of Florida, hereby certify that the foregoing is a true and correct copy of a certain paper filed in the matter of the application of E. T. Davis for a writ of habeas corpus, in the said circuit court, as the same remains of record and on file in said court.

"Witness my hand and the seal of said court at the city of Pensacola, in said district, this 24th day of February, A. D. 1904.

F. W. MARSH, *Clerk.*"

A petition in the same language was prepared, sworn to, and filed by Mr. Belden.

There can be no doubt, from this positive evidence, that Mr. Davis was an attorney in the case when he commenced the action against Judge Swayne, and that he knew Judge Swayne had no interest in the land can not be doubted, and the finding to the contrary by the majority is not supported by a preponderance of evidence.

The following is the record in the case of Simeon Belden, and the record of Mr. Davis is just the same:

"THE UNITED STATES AGAINST SIMEON BELDEN.

"Be it remembered that on the 11th day of November, A. D. 1901, at a term of the United States circuit court in and for the northern district of Florida, the following motion was made in open court and entered of record, to wit:

"And now comes W. A. Blount, an attorney and counselor at law of this court, and practicing therein, and as amicus curiæ, and moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court at a day and hour to be fixed by the court, why they shall not be punished for contempt of the court in causing and procuring, as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment, wherein Florida McGuire is plaintiff and Hon. Charles Swayne is defendant, to be issued from said court and served upon the judge of this court, to recover the possession of block 91, in the Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants, upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Mrs. Florida McGuire *v.* Pensacola City Company et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had stated in open court and in the presence of the said counsel, Simeon Belden and Louis Paquet, that an allegation of the said petition, that he or some member of his family were interested in or owned property in said tract, was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract, because the said suit of Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part of the said tract and had no reason whatever to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely occupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of the said attorneys to postpone the trial of the case of Florida McGuire *v.* Pensacola City Company et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the judge, cognizant of all the facts herein set forth.

"W. A. BLOUNT,

"*An Attorney of this Court.*

"NOVEMBER 11, 1901.

"And afterwards, and on the same day, to wit, on the 11th day of November, A. D. 1901, the following order was made and entered of record in the said cause, to wit:

"In re matter of contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"Upon reading the motion of W. A. Blount, an attorney and counselor of this court, for a citation to Simeon Belden, Louis Paquet, and E. T. Davis why they should be committed for contempt, for the reason set forth in said motion, and after consideration of the same, it is ordered:

"That the said Simeon Belden, Louis Paquet, and E. T. Davis be, and they are hereby, cited to appear before me, Charles Swayne, judge of this court, at 10 o'clock, on Tuesday, November 12, 1901, to show cause why they should not be punished for contempt upon the grounds and for the reasons set forth in the said motion, which is now of record in the records of said court, and a copy of which is to be attached by the clerk to the copy of this order served upon the said Simeon Belden, Louis Paquet, and E. T. Davis.

"Ordered in open court this 11th day of November, A. D. 1901.

"CHAS. SWAYNE, *Judge.*

"At the time of the presentation of the said motion by the said W. A. Blount, in open court, on November 11, 1901, the said Simeon Belden and the said E. T. Davis were present in the said court, and before making said order the said judge made and directed to be spread upon the minutes the following declaration concerning his connection with the land in the Cheveaux tract, mentioned in said motion, to wit:

"On Tuesday, November 5, 1901, at the time of the presentation of the said motion by plaintiffs, that the court recuse himself, he had then stated, and now states, that he never agreed to accept nor ever accepted any deed to any portion of the said Cheveaux tract; that, as he stated, a member of his family, to wit, his wife, had, with money inherited by her from her father's estate, negotiated for the purchase of some city lots in Pensacola; that certain deeds in connection therewith had been sent to her in Delaware, one of them proving to be a quitclaim deed, and upon investigation and inquiry it was found that the property in this deed was a portion of the property in litigation in the suit of Florida McGuire *v.* Pensacola City Company et al., and that thereupon, and by his advice, the said deed was returned to the proposed grantors, with the statement that no further negotiations whatever could be conducted by them in relation to this property, and they thereupon refused to purchase, either at the present time or in the future, any portion of the said tract.

"W. A. Blount, an attorney and counselor at law of this court and practicing therein, and as amicus curiæ, moves the court to cite Simeon Belden, Louis Paquet, and E. T. Davis, attorneys and counselors of this court, to show cause before this court, at a day and hour to be fixed by the court, why they should not be punished for contempt of this court in causing and procuring as attorneys of the circuit court of Escambia County, Fla., a summons in ejectment wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, to be issued from said court and served upon the said judge of this court, to recover the possession of block 91, Cheveaux tract, in the city of Pensacola, Fla., a tract of land involved in a controversy in ejectment then pending in this court in a case wherein the said Florida McGuire was plaintiff and the Pensacola City Company et al. were defendants upon the grounds:

"1. That the said suit in ejectment against the judge of this court was instituted after a petition to this judge to recuse himself in the said case of Florida McGuire *v.* Pensacola City Company et al. had been submitted to the court on November 5, 1901, and denied, and after the said judge had said in open court and in the presence of the said counselors, Simeon Belden and Louis Paquet, that the allegation of the said petition that he, or some member of his family, were interested in or owned property in said tract was untrue, and had stated that he had refused to permit a member of his family to buy land in said tract because the said suit by Florida McGuire, involving the title to the said tract, was in litigation before him, the said judge.

"2. That after the said declaration of the said judge the said counsel were aware that neither the said judge nor any member of his family were the owners of or interested in any part whatever of the said tract and had no reason to believe that he or they were so interested, and knew, or could easily have known, that the said block was not in the possession or control of anyone, but was entirely unoccupied.

"3. That the said suit against the said judge was instituted on Saturday night, the 9th instant, after 6 o'clock, and after the court had overruled the motion of said attorneys to postpone the trial of the said case of Florida McGuire *v.* Pensacola City Company et al. for a week or more, and after the said judge had announced to the said counsel that he would call the case for trial on Monday, November 11, 1901, and would then try the case, unless counsel for plaintiff made a showing why he should not so try, and the said counsel had announced that they would make such showing.

"4. That the said E. T. Davis was, before the instituting of the said suit against the said judge, cognizant of all the facts herein set forth.

"(Indorsements:) In re contempt proceedings Simeon Belden, E. T. Davis, and Louis Paquet. Filed November 11, 1901. F. W. Marsh, clerk.

"(Marshal's return:) United States of America, northern district of Florida, ss. I hereby certify that I served the annexed citation on the therein-named Simeon Belden and E T. Davis, the within-named Louis Paquet not found, being outside the northern district of Florida, by handing to and leaving a true and correct copy thereof with Simeon Belden and E. T. Davis personally, at Pensacola, Escambia County, in said district, on the 11th day of November, A. D. 1901. T. F. McGourin, United States marshal. By R. P. Wharton, deputy.

"And thereafter, to wit, on the 12th day of November, A. D. 1901, the following answer was made and entered in the said cause by the said defendants therein, to wit:

"Before the Hon. Charles Swayne, judge circuit court United States, northern district of Florida. In re matter of the contempt proceedings against Simeon Belden, Louis Paquet, and E. T. Davis.

"And now comes Simeon Belden and E. T. Davis, and for reasons why they should not be punished for contempt, showeth:

"First. That the general grounds upon which the said contempt is based, to wit, summons in ejectment issued from the circuit court of Escambia County, Fla., wherein Florida McGuire was plaintiff and the Hon. Charles Swayne was defendant, that said proceedings is in the jurisdiction of the circuit court of Escambia County, Fla., and that this court is without jurisdiction thereof.

"Second. That the petition to recuse referred to in said motion they had nothing to do with before this court, nor were they present on the 5th day of November when submitted, as stated in said motion, nor present when any statement made by the judge concerning his connection with any of the property, except the statement made by said judge on November 11, after court convened and after the motion to discontinue the case of Florida McGuire *v.* Pensacola City Company et al. was made.

"Third. To the second paragraph showeth: As above stated, they heard no declaration made by the judge referred to in said paragraph, and as for reasons to believe that he, Judge Swayne, or some member of his family, was interested in block 91, Rivas tract of land, named in said summons, we simply refer to the declaration made by Hon. Charles Swayne on November 11, 1901, when said motion was made by the Hon. W. A. Blount, and that after hearing said declaration believe there is in existence a deed to Mrs. Charles Swayne uncanceled, and that they have no knowledge of its repudiation, and as the negotiations for the property named in said deed was one made by Mrs. Charles Swayne in her individual right that no act of the said Hon. Charles Swayne would repudiate or render null and void any transaction made by Mrs. Charles Swayne with her own money or property.

"Fourth. That E. T. Davis, for himself, showeth that this court had no jurisdiction over him in said matter of Florida McGuire *v.* Pensacola City Company et al. until he requested the court to mark his

name as attorney for plaintiff on the morning of November 11, when he presented the motion to discontinue the aforesaid suit.

"SIMEON BELDEN.
"E. T. DAVIS.

"(Indorsements:) Before the Hon. Charles Swayne, judge of the circuit court of the United States for the northern district of Florida, at Pensacola. In re contempt against Simeon Belden, Louis Paquet, and E. T. Davis. Filed November 12, 1901. F. W. Marsh, clerk.

"And afterwards, to wit, on the same day, November 12, 1901, the following proceedings were had in open court, to wit:

"The United States *v.* Simeon Belden. No. 249. Contempt of Court.

"This cause coming on to be heard on the motion of W. A. Blount, attorney and counselor at law of this court, as amicus curiæ, to cite the said Simeon Belden to show cause why he should not be punished for contempt of this court for the reasons in said motion distinctly alleged, and on the rule granted on said motion, dated November 11, 1901, a certified copy of which has been duly served on said Simeon Belden, and on the answer to said rule on this day read and filed in open court by and on behalf of the said Simeon Belden; and after hearing the testimony of the witnesses introduced by the United States and by the said defendant, and after duly considering the same:

"It is now ordered and adjudged that the said Simeon Belden is guilty in manner and form as in said motion and rule set forth of the facts therein alleged; and it is further adjudged that the same constitutes a substantial contempt of the dignity and good order of this court.

"Wherefore it is ordered and adjudged that the said Simeon Belden do pay a fine or penalty to the United States Government of $100, and that he be taken hence to the county jail of Escambia County, Fla., at Pensacola, there confined for and during the term and period of ten days from the 12th day of November, 1901, and that he stand committed until the terms of this sentence be complied with or until he be discharged by due course of law.

"Ordered and done this 12th day of November, A. D. 1901.

"CHAS. SWAYNE, *Judge.*"

At the hearing witnesses were examined, but their testimony is not furnished us, and all we have is a short statement by Mr. Blount of what took place.

In the absence of any of the testimony taken at the hearing we have no right to assume that the allegations of the statement filed charging the contempt were not proven, or that the evidence was not sufficient to warrant the finding of the court that a contempt had been committed. On the contrary, the presumption is that they were and that the evidence was sufficient to warrant and support the judgment of contempt entered by the court.

Mr. Belden and Mr. Davis were attorneys of Judge Swayne's court, and were both attorneys in the case of Florida McGuire, pending in his court. When they requested the judge to recuse himself because he owned a part of the property involved in the litigation they were informed by the judge that he owned no interest whatever in this land and they must have known that he did not. The slightest inquiry on their part would have disclosed this fact, and they admit if anyone owned an interest it was Mrs. Swayne. On Saturday the court informed them that on Monday he would proceed with the case; they desired a postponement until Thursday. A jury was in attendance, and there was no reason why the case should be postponed for that length of time. The witnesses were all within a half an hour call of the court-house, and the parties had all week in which to get ready.

The court said he would proceed with the trial Monday morning unless they made a motion for continuance under the rule, and they said they would do so, and at that time they had in their mind what they afterwards did. Now, what followed? Paquet, Davis, and Belden in the evening met in the grocery store of one of the plaintiffs and consulted what course to take. It was decided to bring an action against Judge Swayne individually, to oust him from a portion of the land embraced within this litigation and for $1,000 mesne profits, when they all well knew, and must have known, that he had never been in the possession of the land and never owned it. They went to the clerk's office, got him to go to the court-house and file the suit. Then the sheriff was found and he was instructed to serve the papers at all hazards that night. They were not satisfied with this, but they wanted to give the suit publicity. They wanted to advertise to the world that Judge Swayne was intending to try the question of title to property in which he owned an interest, and, following this out, prepared a statement of the case and gave it to the morning paper to be published, which was done.

The only excuse they have yet been able to give for this unseemly haste is that they wanted Swayne served before he left the State, a most flimsy and unreasonable excuse. There is only one conclusion that a fair and reasonable mind can draw from all of these facts, and that is, they wanted, desired, and expected, by bringing a fictitious suit, to force Judge Swayne to recuse himself and continue the action. They wanted to so embarrass him that though not disqualified he would refuse to hear the action, and if this conclusion is true there can be no doubt, as attorneys and officers of the court, they were guilty of gross misbehavior, and clearly were guilty of contempt within the meaning of section 725 of the Revised Statutes.

It is true that Judge Swayne, for this contempt, imposed both fine and imprisonment, but this error or law was corrected by Judge Pardee, and surely it can afford no reason for impeachment. Belden and Davis say his manner in passing judgment was harsh and abusive, but all Davis can remember that was said is that the court charged them with ignorance and that their actions were a stench in the nostrils of the community.

This last remark must be very doubtful. But if they were guilty of what they stood charged, if they had collusively and in bad faith commenced this action to interfere with the trial of the case by Judge Swayne and prevent the defendants from securing a speedy trial before the judge of the court, then they were guilty of contempt, and this contempt was not purged by coming in later and dismissing the suit or by the judge using toward them harsh and abusive language.

Mr. Davis sued out a writ of habeas corpus before Judge Pardee. At the hearing Judges McCormick and Shelby sat with him and concurred in his opinion.

The court says:

"The relator is an attorney and counselor of the United States circuit court for the northern district of Florida, and, as such, one of the officers of the court, within the intent and meaning of the above statute. As such officer he was and is charged with conduct in and out of court which, if accompanied with malicious intent, or if it had the effect to embarrass and obstruct the administration of justice, was such misbehavior as amounted to contempt of court."

The writ of habeas corpus was discharged. There is no doubt that this suit was brought with no intention to ever try it. In fact it was dropped. And there can be no other conclusion but that the commencement of this action could have no other effect than to embarrass and obstruct the administration of justice. The fact that the suit was commenced in the State court can make no difference, because its effect, as intended, was to embarrass Judge Swayne in trying the action pending before him in the United States court.

Plaintiffs dismissed the suit, but in a few months commenced it again in Judge Swayne's court, which fact shows that when they dismissed it first they had no intention to abandon it.

But the majority find fault and lay great stress upon the fact that, in his judgment, finding Belden and Davis guilty of contempt, he does not, in the language of the statute, find them guilty of misbehavior as officers of his court, but adjudged that their conduct constituted a substantial contempt of the dignity and good order of the court. And is it not true that a misbehavior of an attorney is a contempt of the dignity and good order of the court?

To embarrass the court in the administration of justice surely must be a contempt of the orderly conduct of the court in its business.

In discussing Judge Swayne's action in passing judgment of contempt against Belden and Davis, the majority show considerable feeling. The committee charge that he was "guilty of gross abuse of judicial power and misbehavior in office," and that knowing the law, and knowing that no contempt had been committed, he, with a bad and evil intent, declared them guilty. This is making a very broad accusation when we consider all of the facts and surrounding circumstances and the law controlling the same.

The committee say that Judge Swayne "knew that proceedings for a contempt not committed in the presence of the court must be founded on an affidavit setting forth the facts and circumstances constituting the alleged contempt" and "knew that issuing of proofs without filing was erroneous," and "knowing the law, Judge Swayne issued a rule to show cause why Davis and Belden should not be committed for contempt upon an unsworn statement of Mr. W. A. Blount."

Now, it is to be hoped that the House will not vote to impeach any one for a mistake of law or ignorance of it, for if such a precedent is established none of us will be safe. It might be possible that Judge Swayne did not know the law as stated above, and it might be possible that such is not the law. It is true that the committee cite one California and two Indiana cases, but in California the Code of Civil Procedure provides that a contempt committed out of the presence of the court can only be called to its attention by affidavit, and no doubt Indiana has a similar statute.

There is no settled practice in contempt proceedings. (United States *v.* Sweeney, 95 Fed., 446.) In volume 9, page 38, of the Cyclopedia of Law and Procedure we find the law stated as follows:

"As a rule the proceeding to punish for contempt committed out of the presence of the court should be instituted by a statement or some writing or affidavit presented to the court setting forth the facts."

Numerous authorities from all over the United States are cited to support this proposition of law.

And it has been held that in such a case the court may even act of its own motion and make the accusation. (24 W. Va., 416; 81 Mich., 592; 27 How. Prac., 14.)

It might have been possible that Judge Swayne did not know of the decision in California or the statutes of Indiana, but followed the rule as stated above.

It is claimed that Davis and Belden purged themselves of contempt. The law on this question has already been given, and it is not necessary to report it again. The affidavit or answers filed by Davis and Belden were not broad enough under the rule, and Belden said, when asked a question at the hearing, that he did not purge himself and would not do it. But look at the matter seriously from the facts and circumstances that existed at the time judgment was pronounced.

The majority report proceeded on the theory that the action was commenced in good faith and upon substantial grounds; that having commenced the action in the State court no contempt could have been committed against the Federal court. If attorneys, who are officers of the Federal court, to embarrass the judge of that court in the administration of justice, commence an unmeritorious action in the State court against him, is it not contempt? Is there any law by which the place in which the contempt has been committed excuses it? Was the action brought in good faith? No; for this reason: Belden, Davis, and Paquet are all good lawyers; they knew that Mrs. Swayne was buying the land; they knew that the deed had been made in her favor, and therefore they knew that if the title had ever left Edgar it vested in her. Being lawyers, they must have known that if the title was in her no judgment against Judge Swayne individually would divest her of that title, and therefore such a judgment would avail their clients nothing. If they were acting in good faith for the purpose of trying title to land, knowing all of the facts just stated, they certainly would have sued Mrs. Swayne as the owner of the land and joined her husband with her.

Belden says:

"It was so positive she had purchased it.

"Q. Did you have any reason to suppose Judge Swayne had exercised any acts of ownership?—A. No.

"Q. Did you have any such information before you brought the suit?—A. I did not. When we learned that suit was pending in the county judge's court against Edgar that revealed the fact that sale had been made to Mrs. Lydia C. Swayne."

Commencing an action against Judge Swayne alone after he had stated that he would proceed with the trial of the case unless they made a motion to continue it under the rule, and they having stated they would do so, is very suspicious, and is made more so when they never did anything further with the suit. There can be no doubt that they were acting in bad faith. There can be no doubt of their motives and what they sought to accomplish. Why was it necessary to proceed with such haste? Why was it necessary to find the clerk and sheriff that Saturday night and cause one to file the papers and the other to serve them? If they intended to dismiss the suit Monday morning, as they now claim, why did they not wait until Monday and commence the suit after the other action had been dismissed? Why was it necessary to prepare an article for the paper and procure its publication that night?

There can only be one answer to all these questions, one explanation of their conduct—that it was their intention to carry out the statement made to the court that they would show grounds for a continuance Monday morning. There can be no other sane reason; no other reason can explain their conduct. All of this was done to embarrass the court in the trial of the case pending before him. They were seeking to force him to recuse himself, or, if he persisted in

trying the case, to do so in the face of the charge, made public by the press, that he was, as judge, trying title to a piece of land in which he owned an interest. Where is the court in the land that would permit such conduct as this to pass unnoticed and unchallenged? Did not Judge Swayne, under all these circumstances, have the right to inquire into this matter and punish the parties if guilty? And having committed the contempt, could they purge themselves by dismissing the action? The contempt was committed Saturday evening, for which they could have been punished then, and can it be seriously urged now that dismissing the action, perhaps because of what they had done, that they stood innocent of any wrong when their trial took place? Such a contention can have no support in reason. The judge did his duty as he saw it, and the facts certainly warranted his belief. This seems to be a very slim charge on which to impeach a Federal judge. There were certainly good grounds for his action, and he had the right, from all the peculiar facts and circumstances, to believe a contempt had been committed.

After the hearing was closed the following papers filed in the contempt proceedings of Belden and Davis were received, and the same are hereby embodied in this report.

The following is a copy of the newspaper article which it is alleged Belden, Davis, and Paquet prepared and procured to be published:

"JUDGE SWAYNE SUMMONED AS PARTY TO THE SUIT IN CASE OF FLORIDA M'GUIRE V. PENSACOLA COMPANY ET AL.

"A decided new move was made in the now celebrated case of Mrs. Florida McGuire, who is the owner by inheritance and claims the possession of what is known as the 'Rivas tract,' in the eastern portion of the city, near Bayou Texas, by the filing of a præcipe for summons, through her attorneys, ex-Attorney-General Simeon Belden, Judge Louis P. Paquet, of New Orleans, and E. T. Davis, of this city, in the circuit court of Escambia County, in an ejectment proceedings for possession of block 91, as per map of T. C. Watson, which as part of the property which is claimed by Mrs. Florida McGuire, and which is alleged that Judge Swayne purchased from a real estate agent in this city during the summer months, and which is a part of the property now in litigation before him.

"The summons was placed in the hands of Sheriff Smith late last night for service.

"Filed November 12, 1901.

"F. W. MARSH, *Clerk.*"

The following is a copy of a statement filed by Louis P. Paquet in Judge Swayne's court, and connected with the commencement of the action against Judge Swayne by himself, Belden, and Davis in the State court of Florida, referred to in the foregoing newspaper article:

"United States circuit court, northern district of Florida, at Pensacola.—In the matter of contempt proceedings against Louis P. Paquet.

"Now comes Louis P. Paquet, respondent in the above-entitled matter, and says:

"That upon full and mature consideration of his actions and conduct in the matter referred to in the motion, made as the basis of the above-entitled proceedings, through excessive zeal in behalf of his clients, he did so act that this honorable court was justified in believing that the said actions were committed in contempt thereof and as showing disrespect therefor. That respondent regrets exceedingly the course taken by him in this matter, and now appears in court and requests that he be permitted to apoligize for his behavior and file with the records in the above-entitled cause this paper.

LOUIS P. PAQUET, *Respondent.*

"Filed March 31, 1902.

"F. W. MARSH, *Clerk.*"

The contempt proceedings against Mr. Paquet were dropped.

HOSKINS CASE.

Fourth. The majority contend that Judge Swayne should be impeached because he refused to proceed to trial in the W. H. Hoskins bankruptcy proceeding, when the attorneys for the petitioners were asking for a continuance for two weeks in which to secure certain evidence.

I find the facts of this case to be as follows:

On February 10, 1902, an involuntary petition in bankruptcy was filed in Judge Swayne's court against W. H. Hoskins.

On February 24, B. S. Liddon appeared in said matter on behalf of said Hoskins and demurred to the petition. On the 24th of February, John M. Calhoun was appointed receiver and on the 25th gave the usual bond, which was approved on the 26th.

On the 27th of February the court sustained the demurrer to the petition, one of the grounds being that the petition was not verified as required by law, and also that the petition did not set forth if the petitioning creditors were firms, partnerships, or corporations, and gave petitioners ten days in which to amend their petition. After that, and in fact before this date, B. S. Liddon, the bankrupt's attorney, and who appears in this proceeding as the chief counsel for the prosecution, commenced industriously to get creditors to withdraw their petitions and claims, and, it is alleged, made misrepresentations and threats to secure affidavits from petitioners and to cause them to withdraw their claims, so as to defeat the bankrupt proceedings pending before the court, which facts are set forth in affidavits filed in the cause by J. W. Calhoun and J. Hartsfield; and in the case of Hartsfield it is stated that he signed the affidavit through fear of Hoskins and one Justice, and that notwithstanding the petition he signed he desires the proceedings to go forward.

The court on motion extended the time to file an amended petition to March 9, and on March 22 W. H. Hoskins filed his answer thereto. On March 20, Hoskins having given a bond in the sum of $5,000, had his property all turned over to him by the receiver, and he took the possession thereof and continued his business. On the 5th day of March, 1902, Charles D. Hoskins, son of the said alleged bankrupt, at the suggestion of his father to get a certain book, made an assault upon one J. N. Richardson, the deputy of the receiver; pulled him out of his buggy, beat him violently, causing the said Richardson, who was an old man, to remain in his bed for some time, and took from him the book; that this book was a book taken by the receiver from the place where the bankrupt Hoskins carried on his business, and which it was alleged by the receiver, upon information and belief, belonged to the alleged bankrupt and contained his accounts. For this assault upon Mr. Richardson, an officer of the court, Judge Swayne issued a rule for C. D. Hoskins to appear before the court and show cause why he should not be punished for contempt. Hoskins concealed himself, was never served and never appeared before the court and never surrendered the book.

On March 24 or 25 the cause was set down for trial to take place on the 31st. Mr. Hoskins contended that he was solvent and could meet all his obligations and was ready and willing to do so, which was a fact. But he, through his attorney, refused to pay one cent of costs, and here is where all the trouble arose. Had he been willing to arrange for the payment of the costs everything could have been settled and dismissed at once without any trial. He never requested the court to fix the amount of costs, because he refused to pay any at all.

Considerable cost had been incurred, the United States marshal alone having a bill of $304 for taking care of property and feeding stock. On the morning of March 31 the attorneys for petitioners requested the court to continue the case for two weeks, as they could not safely proceed to trial without the book, which they were informed and believed contained material evidence, and which C. D. Hoskins had by force and violence taken from the custody of the receiver, and which he refused to return.

This motion was resisted by the bankrupt, he contending that he was ready for trial, that the book was not his and that he could prove by witnesses present that the book was not his. He also claimed that he had no control over the book. Judge Swayne, notwithstanding this offer, refused to hear the evidence; said he would not believe his brother under the circumstances, and insisted he would continue the case until the book was produced. The majority condemn Judge Swayne for this conduct and contend that he should be impeached for it. The case had only been at issue five or six days; all of the property was then in the possession of the bankrupt and not under expense. He had full control of his business. Also many things had come to the attention of the court in this matter besides taking the book that might well cause him to proceed with caution, to doubt the honesty of the bankrupt, and to believe that the book contained material matters and which the court should know.

Petitioning creditors had been requested to withdraw their claims, some had been threatened, and the deputy of the receiver had been assaulted in a most brutal manner and a book taken from his possession which it was alleged contained the accounts of the bankrupt. Under all of these circumstances it can not be said the court did not act with due discretion when the case was continued.

The right to continue a case rests always in the discretion of the judge. He did not deny Hoskins a trial; he did no act which injured him in his rights. Hoskins already was in the possession of his property, and the judge was ready to try the case and did offer to try it in June, but the parties had stipulated to try it in the following November, showing there was no hurry about a trial. It never was tried, but was settled, the bankrupt agreeing to pay part of the costs, and in fact the question of costs was all there was in the case and all that kept it from being settled in March.

The majority lay great stress on the fact that some lawyers had entered into a conspiracy to ruin Hoskins and plunder his estate. If this should be true the court was not a party to it, and it was never brought to his notice. The judge acted absolutely in good faith, and there is no evidence whatever that he lent himself to any conspiracy.

The attorneys on both sides are not to be commended for their conduct in this matter, and surely what they did or what they desired to do can not be used as a basis to impeach the judge, especially when he was ignorant of it all. He sustained the demurrer; he released the property; he was willing to try the case and came to Pensacola in June to do so, and did not do so from the fact that these parties, who were so desirous for a speedy trial to the end that they would not be ruined in their property and credit, had entered into a written stipulation that the case should be tried at the November term.

This is the Hoskins's case, as it appears from the record, and for the judge's conduct in this case this committee is asked to impeach him. Still, if he is to be impeached, the grounds for doing so in this particular case are just as good and substantial as in any other instance presented by the prosecutors of the resolution. Liddon, who is the chief prosecutor in this action, was trying to force matters and was also interfering with the clients of the creditor's attorneys. The creditors wanted a book produced in court that Hoskins told his son to take from the receiver. The books must have been in Hoskins's control, and were the best evidence of what they contained. Had the books been produced for the inspection of the court there would have been no trouble or delay, and this, no doubt, Hoskins could have done. Under the circumstances the court could well have granted the continuance asked, and there was no abuse of discretion in doing so. Hoskins could not have been injured by reason of this continuance, because he had all of his property in his possession, was carrying on his business, and was suffering no loss. In fact, he agreed to postpone the trial until the following November, notwithstanding that the court was willing to try it earlier, which alone is a strong reason that no injury was done to Hoskins.

TUNISON CASE.

They say Judge Swayne appointed one B. C. Tunison a United States commissioner after Tunison had been impeached in his court. Tunison was a commissioner in 1892 or 1893. He claimed to have been shot by one Humphreys and caused his arrest. Humphreys was tried in 1892 or 1893, and the trial was a bitter one. Tunison was impeached at that time. Tunison is one of the ablest lawyers in Florida and is so conceded. He discharged the duties as United States commissioner well and without complaint. He had the very best citizens of Pensacola for his clients and as his friends.

In 1897 the entire bar of Pensacola indorsed him for United States district attorney for the northern district of Florida. At the same time many of the best and most prominent citizens wrote letters in his behalf. After this indorsement by the bar in 1897 his term expired and he was reappointed by Judge Swayne. Most of those who impeached him were his enemies. His friends said his reputation as a citizen was good. His enemies spoke ill of him, and his friends spoke well of him, but no charge was ever made against him for neglect or wrongdoing in his official duties, and he has been commended for the able and efficient manner in which he discharged them. But it is said that it is reported in Florida that Tunison has and exercises an undue influence over the court, so that, as generally understood, to win in Judge Swayne's court you must employ Tunison.

There is no evidence that this rumor ever came to the attention of Judge Swayne, or that it is well founded. There is no instance shown wherein Judge Swayne ever granted any favor to Tunison. There is nothing to prove that at any time, or in any proceeding, Judge Swayne was corruptly or otherwise influenced by Tunison. But this charge caused an examination of the records to be made, and it appeared therefrom that out of eighteen cases tried by Mr. Tunison before Judge Swayne he lost twelve. And to further show that this charge is untrue—that is, that Tunison has influence with the court—I only have to call the attention of the committee to the instance where Tunison

was employed to see Judge Swayne and induce him to dismiss the charge for contempt against C. D. Hoskins for assaulting and cruelly beating an officer of the court, and the judge's refusal to do so until Hoskins, who had been evading the officers of the law, should present himself before the court.

It is not an uncommon thing to hear that an attorney has influence with a judge, and some go so far as to state that it is a corrupt influence; but never before now did I hear it seriously contended that because of such a rumor, of which the judge had no knowledge and which is unfounded in fact, the judge should be impeached and removed from office.

This ground for impeachment demonstrates one thing, and that is the animus behind this entire proceeding is to impeach Judge Swayne at any hazards. A number of witnesses, many enemies of the court, or in the pay of O'Neal, go on the witness stand and swear to a rumor which they have heard, to wit, that Tunison exercises an undue influence over Judge Swayne, and without any evidence showing such to be the fact, without the showing of a single instance in which the court ever favored Tunison or decided a case in his favor wrongfully, without showing that the judge ever acted corruptly or ever knew of such rumor, the majority of the committee present this as a ground for impeachment, and as a companion piece to this ground present another equally as unfounded in the contempt proceedings instituted against C. D. Hoskins.

CASE OF C. D. HOSKINS.

When the members of the subcommittee met to disagree, it was then agreed by us all that there was nothing in the charges concerning the contempt proceedings preferred against C. D. Hoskins which would warrant any impeachment, but I see that Mr. PALMER has now embraced the same within his report, and I am glad that he has, as it will show the Members of the House the character of charges preferred and how unwarranted they are.

On the 5th day of March, 1902, C. D. Hoskins, a young man, assaulted a Mr. Richardson, who was a deputy of the receiver appointed in the Hoskins bankruptcy proceeding, dragged him out of his buggy, brutally beat him, and took from him a certain book or ledger, which it was alleged belonged to said bankrupt and contained accounts of his business transactions. Young Hoskins claimed that the book belonged to him. Mr. Richardson was an old man, and the beating was so severe that he was confined, because thereof, to his bed for several weeks.

The matter was brought to the attention of Judge Swayne by an affidavit filed for the purpose of commencing contempt proceedings against young Hoskins. The affidavit was in proper form and stated sufficient facts to justify the court in granting a rule for the attachment of young Hoskins to show cause why he should not be punished for contempt. Young Hoskins was never served. He kept in hiding. An attempt was made to get the court to dismiss the matter or to impose a fine, but Judge Swayne, considering the character of the assault and the fact that Hoskins had evaded the officers of the court, refused to do anything until Hoskins appeared in court and was examined. Hoskins was in the habit of becoming intoxicated, and one day he left for Pensacola with $450 on his person, got to drinking hard, and was found dead, it being claimed that he took laudanum to commit suicide. Now it is claimed that he took the poison rather than face Judge Swayne. A more unreasonable and unfounded statement never was made. He was not under arrest. This was a long time after the contempt had been committed. Judge Swayne had made no threats against him, and had done no act to oppress him. All he ever did was to issue a rule upon an affidavit which made it his duty to do so. He did what any judge in the land would have done when it was brought to his notice that an officer of his court, while in the discharge of his official duties, had been assaulted, brutally beaten, and property in the custody of the law taken from him by force.

I am glad that the majority have made Young Hoskins's case a ground for impeachment, because it emphasizes the effort that is being made to unjustly ruin a man who has faithfully discharged his judicial duties. He has been guilty of wrongdoing, oppression, and tyranny because he found one man guilty of contempt for stabbing an officer of his court and interfering with him in the discharge of his duties and for issuing an order for the arrest of another who brutally assaulted another officer and took from him by force property in his custody as an officer of the court. No judge was ever before in this country maligned, abused, slandered, and illtreated as Judge Swayne has been, and this maliciously, too. It has been reported of him by his enemies, and caused to be published in the press throughout the land, that he is a corrupt judge, ignorant and incompetent; that he has managed bankrupt estates pending in his court in such a manner as to absorb the entire estate in unnecessary costs, expenses, and allowances, to the great wrong and injury of creditors and others, until such administration is in effect legalized robbery and a stench in the nostrils of all good people.

The foregoing language first found form in a resolution lobbied by the said O'Neal through the Florida legislature. It was again stated on the floor of the House of Representatives when this resolution was offered, and it has been published throughout the land in the public press, and there is not a scintilla of truth in any part of it, or no fact proven to warrant even the suspicion of such grave and serious charges. A subcommittee spent ten days in Florida investigating these charges, and the result of their labors is now printed and on file with the documents of this House. Every opportunity was given to Judge Swayne's accusers to prove their charges. Every witness they wanted was subpœnaed, hearsay, irrelevant, and immaterial matters were received in evidence, and no obstacles were put in their way. Five lawyers for the prosecution for some time had been diligently at work, and I submit that not one single bit of proof can be shown where Judge Swayne ever did an act that was corrupt or unbecoming a just and upright judge. So much for the charges of corruption. The record introduced and printed, giving a list of cases tried by him and appealed, shows that as a judge he has made an excellent record and that he is not incompetent and ignorant.

The fact that Judge Pardee assigned him to sit on the circuit court of appeals and to try cases in different parts of the district for six, seven, and eight months during the year is a good recommendation for his standing as a judge. In fact, no one so far has had the hardihood to come forward and swear that he is an incompetent and ignorant judge, and there is nothing in the record that shows it.

As to the bankruptcy business, there can be no excuse for the slanderous statements made, to wit: That "all cases were managed corruptly, the assets frittered away, no dividends paid, until the matter became so notorious as to be a stench in the nostrils of the people." This is hard language, and, more than this, it is not supported by the evidence.

Out of 175 cases of bankruptcy commenced in his court the prosecutors picked out five or six. They were requested to call the attention of the committee to any wrongs committed in these particular cases, and this they failed to do. Out of 175 cases not one was shown to have been managed as they had charged. On the contrary, the report of the Attorney-General shows that the bankruptcy business before Judge Swayne was managed prudently and well. Every judge has the right to have his honesty and integrity protected. Nothing so weakens the respect for a judge as to charge him with corruption. Nothing should be quicker frowned down by the people than such charges when false. Judge Swayne has for months stood up under these false and malicious reports—and they were malicious when made because they were based on no fact. He is entitled to vindication somewhere. The charges have been preferred in this House, the evidence is on file here, and he should receive his vindication here.

J. N. GILLETT.
ROBT. M. NEVIN.
D. S. ALEXANDER.
GEO. A. PEARRE.

VIEWS OF MR. LITTLEFIELD.

I have not had the time to examine carefully the minority views of Mr. GILLETT, but I have examined with care the record in this case, and I have no hesitation in saying that, in my opinion, it does not disclose a state of facts that would justify impeachment proceedings.

C. E. LITTLEFIELD.

VIEWS OF MR. PARKER.

In the opinion of the subscriber, proceedings for impeachment of Judge Charles Swayne should not be begun. It is not necessary always to justify his action or to maintain that his behavior has always been consistent with judicial dignity or the duty that he owes to his district. He has been out of that district a great deal of each year, but since 1901 he has rented a house there, and more lately his wife has purchased, and it can hardly be said that he has not resided there, within the meaning of this criminal statute, for a period covering all ordinary limitations of criminal prosecutions. Those limitations should govern this case.

It does not appear that his behavior in any of the cases cited by the majority renders him liable to impeachment. He was justifiably severe with O'Neal for getting into a quarrel with an officer of his court about his official action as receiver in bankruptcy and then stabbing him. He was right to be severe when young Hoskins beat the clerk of another such receiver and took from him books claimed by that receiver. He had occasion for righteous indignation against two attorneys of his court, who doubted his word when he denied all interest in a case pending before him, and brought suit against him personally in order publicly to emphasize that doubt. In such a case he should not be censured even if he went to the limit of his jurisdiction to defend the honor of his court.

The adjournment of the proceedings in bankruptcy of the elder Hoskins was intimately connected with the contempt proceedings as to the younger one. There appears to be no substantial proof of the charges of corruption, ignorance, incompetency, deliberate waste of bankruptcy assets, criminal or improper favoritism to certain lawyers, failure to hold terms, improper acceptance of accommodation indorsements from attorneys or litigants, or the wrongful discharge of convicts. In the opinion of the majority all these charges appear to be without foundation. Whether the conditions that prevail in this district demand some legislative remedy may be a question, which is not here now. In my opinion Judge Swayne is not liable to impeachment.

RICHARD WAYNE PARKER.

Mr. GILLETT of California. Mr. Speaker, how much time have I remaining?

The SPEAKER pro tempore. The gentleman has twenty minutes remaining.

Mr. GILLETT of California. Mr. Speaker, I reserve the rest of my time.

Mr. PALMER. I have the conclusion of this matter, I believe, and I think the gentleman ought to use his time now.

Mr. GILLETT of California. I will reserve my time and we will get through that much earlier if I do not want to use it.

Mr. PALMER. I yield one hour to the gentleman from Missouri [Mr. DE ARMOND].

Mr. DE ARMOND. Mr. Speaker, I had regarded the situation and the surroundings as peculiarly favorable for an impartial consideration and an honest and patriotic disposition of this case. No political campaign is on to excite the Members of this House or the country. The same party that is in the majority here is in the majority in the Senate and by an overwhelming vote of the people it has been intrusted for four years more with the executive control of this Government. If the judge against whom articles of impeachment have been reported be removed from office he will be succeeded by another of the same political faith. How any party or any faction of any party could derive advantage or suffer harm through the proper disposition of this case is something entirely beyond my power to fathom; and yet, Mr. Speaker, there is evidently on foot and has been in progress for days an effort, organized, systematic, persistent, to dispose of the matter, not according to the merits, not according to the facts or the law, but by drawing the line, if it be possible, upon the middle aisle of the House.

I do not know, Mr. Speaker, that there has ever come to me in my career here in this House a moment when I felt like bowing my head in sorrow and in shame as when the letter from Judge Pardee was read yesterday by the gentleman from Ohio [Mr. GROSVENOR]. From the depths of my heart I am today in sorrow and in shame for that exhibition. The first time in the history of the American Republic we have just had in the House a saddening exhibition of judicial partisan intermeddling.

Suppose some one, out of feelings no matter how tender, out of regard no matter how high or how deep, out of motives no matter how pure, according to his conception, should write to a juror sitting in a court under Judge Pardee and say, "I can not believe that a juror of your political faith will render a verdict for the plaintiff or will find the defendant guilty."

Even though it were ignorance appealing to ignorance in sightless innocence instead of a judicial dignitary in petty partisan zeal appealing to legislative cunning and prejudice, what would be the action of the judge? How with righteous indignation his brow would be mantled! How would the terrors of judicial dignity and judicial power be visited upon him who dared invade the sancity of the court and seek to prejudice a juror and turn him from duty! Suppose the man writing to the juror were to say, "I do not really know anything about this matter, but I am sure that on account of politics you will forget your oath; you will have no regard for your duty to the country; you will have no respect for the facts of the case nor the requirements of the law." What would be the action of the judge then?

I understand that this is an upright judge and that his record is good. I am sorry that he has put upon that record a stain which years of usefulness, which even a lifetime of rectitude and judicial dignity and devotion to judicial duty, could not remove. The ermine is stained beyond the power of time and the effort of man to make it clean again.

There it is and there it will hang, the one judicial robe in all our history thus stained and tarnished and blotched, with time but deepening the hue of the great indiscretion and holding it up for the wonder and the sorrow and the warning of those who are to come. I am sorry that this has happened. I am sorry that the eloquent and capable gentleman from Ohio [Mr. GROSVENOR], in the plenitude of his zeal and in the rich fruition of his partisanship, saw proper to expose his friend, the Judge, where he will stand for all time, pilloried as the judge who attempted to do here in this House, who attempted to do here in the great American Congress, that which if done by the humblest man in the land in the meanest court that sits would bring down upon the offender the condemnation of his neighbors and the heavy hand of judicial correction.

In his telegram authorizing the public use of his letter to defeat the efforts at impeachment, Judge Pardee says: "Use your discretion in my behalf and I will be satisfied." What will the judge finally think of the "discretion?" Will he wish any further use of such discretion "in my behalf," and will he be "satisfied?"

This is a partisan proceeding, is it? This is a pursuit of Judge Swayne, forsooth, because he is a Republican, is it? What are the charges against him? Not one of them relates to politics. There is not a particle of politics in one of them, except politics such as Judge Pardee injects when, in his letter to the gentleman from Ohio [Mr. GROSVENOR], he says:

> I do not think that a Republican House should vote impeachment against him [Swayne].

Is there any politics in certifying to an expenditure of $10 a day when only two or three or four dollars a day have been expended? Is that partisan? Was it partisanship to use, as Judge Swayne used, cars in the possession of the receiver appointed by him? Is that partisanship? Where does the partisanship crop out in the sad case of O'Neal? Where is the partisanship in the case of Belden and Davis? Is the requirement of the law that a judge shall reside in his district political, or are the facts of residence and nonresidence partisan? Never was a case freer of politics, and never was there one that should be freer from partisan influence and prejudice.

Then what of the attitude of the judge who, descending from his lofty seat upon the woolsack down, down to the level of those who suggest things to juries, writes such a letter as Judge Pardee wrote, or of him who, from his place here in the House, tries by arousing partisan feeling to blind the judgment of honest men, to hoodwink and tie those whose honest intentions would see no partisanship?

When the muse of history comes to gaze upon the record made here to-day and goes over these proceedings, how will these people appear? How far away will drift the clouds and the dust, and how dull and pulseless will be the stir and the noise of partisan contention, and how strong, and clear, and distinct will loom the outlines of this case!

Here are the facts in the record, and here they will remain until the erasing finger of time in far distant ages shall have rubbed them out. Partisanship, forsooth! What has this mighty party—so recently covered with the laurels of a phenomenal victory—what has it to gain by invoking partisanship here and shielding by partisan means a judge against whom articles of impeachment are leveled?

Let us consider for a moment this strange, new philosophy, this philosophy of tender conscience, this philosophy of sublime self-consciousness, which must be satisfied beyond a reasonable doubt of the guilt of Judge Swayne before—what? Finding him guilty? Oh, no; before putting him upon trial, so that the triers—the Senate—may determine whether or not he is guilty! Gentlemen exhibit here to the admiring gaze of their fellows and hope to place before the eyes of an admiring country a tender consciousness, a kindly good feeling which justifies the conviction of Belden and Davis and O'Neal, not beyond a reasonable doubt, but contrary to a reasonable doubt and against the weight of the evidence. No conscientious scruples, no reasonable doubt about poor O'Neal, gone to his long account. No question of reasonable doubt about the guilt or about the motives of Davis and Belden. Only about Judge Swayne must reasonable doubts swarm—unless satisfied beyond a reasonable doubt that Judge Swayne is guilty do not put him upon trial!

Eloquent gentlemen who hope to stand high as lawyers, and who heretofore have stood high in the estimation of this House, gravely urge that no articles of impeachment should be voted here, no trial should take place in the Senate, unless beyond a reasonable doubt they are satisfied of Judge Swayne's guilt.

The Constitution is not up to the level of the vast intelligence and the high conscientiousness of these gentlemen. It is defective in this particular. Strange that the Constitution did not provide that any person against whom articles of impeachment should be exhibited, after being here found guilty beyond a reasonable doubt, might be tried in the Senate to see whether he would be found guilty there also. Sainted fathers from the far-away past! Great men of that great age of this Republic, when the Constitution was made and the foundation stones of human liberty and self-government were anchored deep and fast, you did not have this tender conscience, this grand, broad, sweeping intelligence, this tremendous grasp and profound legal learning, which require that a man shall be convicted before he is placed on trial! [Laughter.] Oh, if it had been possible for these sapient sons to change places with the fathers, what a Constitution we would have!

And then gentlemen have discovered, too, that the Constitution provides for impeachment only in cases of treason, bribery, and other high crimes and misdemeanors. There we have again the profound learning of our friends, all exerted for the benefit of Judge Swayne. I would like these gentlemen to tell the House, and I am sorry they did not tell—I hope some of them may put remarks into the RECORD explaining to the House—what is to be done in the case of a judge who does not live up to the requirement and work up to the standard of "good behavior" in office? Do you know any way to get him out except by impeachment?

Is it not a fact and a very common fact that in construing constitutions and statutes you take into consideration all in the documents before you—all in the book—all in the Constitution relating to a particular subject-matter, reading it altogether and in harmony, if you can?

In one provision of the Constitution it is said that civil officers may be removed by impeachment for treason, bribery, and other high crimes and misdemeanors. In another part the Constitution says that these lifetime officers shall hold office during "good behavior." Gentlemen say that Judge Swayne has not been shown to be guilty of "high crimes and misdemeanors," in a technical sense and therefore he can not be impeached and can not be removed from office. If his conduct has fallen short of the requirements of "good behavior" in a judge, no question, it seems to me, can abide in the mind of a man who will consider fairly and deal dispassionately with the subject, as to the right, power, or duty of the House to impeach, or of the Senate to try and convict, a civil officer of the Government, on impeachment, when his behavior is bad instead of good.

Now, let us look upon these charges, and I can only dwell upon them briefly. One charge is that this Judge Swayne certified to his expenses at $10 a day, when they were less. Is it true or not true? Its truth stands demonstrated. What is the law? Men may quibble about it, but the law entitles the judge to the amount of his reasonable expenses, whatever the amount, not to exceed $10 a day. That is all.

But, say gentlemen, he ought to be permitted to show that there are other judges who also have been charging $10 a day when, maybe, their expenses were less. That is a fine philosophy, and there are a good many people in this country, but, happily, far from a majority—really a small minority—who would be very glad to see that doctrine established. A light-fingered gentleman arrested for feloniously lifting a pocket-book from its proper receptacle in the wearing apparel of the owner, confessing his guilt, might, in seeking to defend his

conduct, offer to show that there are other people who steal pocketbooks; and when that character of testimony is not admitted there are gentlemen of high standing as legislators who, for consistency's sake, should insist that a great mistake is made, a great wrong done.

Gentlemen, why, on your theory, would it not be better to revise our whole court procedure? Let the courts in administering justice say, for instance, "Gentlemen of the jury, it is charged that this man stole a horse, and he admits that he did; but, gentlemen of the jury, does the testimony show that he is not alone, is not the sole operator, in this field? If you find that other people are engaged in the same business, you will return a verdict of 'not guilty?'"

How amazing that in the House of Representatives, how astonishing that in a body composed largely of lawyers, gentlemen gravely and apparently with sincerity—certainly with unction and with many words and the consumption of much time—contend for a proposition like this!

Judge Swayne enjoyed the "hospitality" of a receiver whom he had appointed. A passenger car—the president's car—was sent to Guyencourt, Del., for him, and upon that car he and his family and some friends were carried, at the expense of this railroad in embarrassment, to Florida, where he was to hold court. Another time he was conveyed across this great continent, from far-away Florida, down in the southeast, across the great swelling southland, along hard by the fields of blooming cotton, away over the mighty Mississippi, away across the vast plains that lie to the west, over the great Rockies, even to the far-away ocean which washes the western shore of the continent—as the "guest" of a railroad company!

And mark you, gentlemen—there has been a little confusion about this—as the guest of the Florida Central and Peninsular Railroad Company, whose general passenger agent went along with him, distributing, as the Judge naively says, literature to advertise the railroad. And note, too, that the uncontradicted testimony of a reputable man establishes to a moral certainty that that railroad at that time had important litigation pending in the court over which Judge Swayne presided.

Oh, yes; "a small matter," say gentlemen. They estimate, in a rough way, that the conveyance from Guyencourt of the Judge and his family and "wife's people" cost the railroad company, whose property was in the hands of his receiver, a small sum only. We have all of us heard, as one of the old stories passing from mouth to mouth and generation to generation, about a certain individual once making a defense on a plea that had to do with size and not with substance. How far would that plea go—how much would Judge Swayne have to wrongfully use a car placed by him in the hands of a receiver, and how much would the use of it have to be worth, before he would reach a point where he would have committed an offense or effected a departure from "good behavior," on account of which he might be impeached?

But gentlemen say, "Oh, we do not justify that." No, not by your words. How about your votes? If you vote against impeaching Swayne you do justify it. You justify it in a solemn and effective way. Oh, how weak are our words here, how little do our arguments amount to, and how great, how weighty, how tremendous, sometimes, are the consequences of the decisions made by our votes! "Oh, no," say these gentlemen, "we do not justify that. The fact is, we rather think Judge Swayne is censurable for that, but let us not impeach him."

And the railroad car was not hurt any by this use! It was quite a good thing for it, a kind of relief from the tedium and the comparative ennui from which the car suffered in standing upon the siding. It was rather beneficial to the car! Is that an argument? Will that do? Suppose that Judge Swayne's receiver had had a livery stable in charge. It would answer just as well to claim that the horses were better for exercise; and as for the vehicles, it was not good for them to stand by unused, and therefore Judge Swayne might do a livery business and make what he could out of it. The vice is in doing what he had no right to do, what he should not do, what constitutes, to say the least, a departure from "good behavior," upon which his title to his office depends.

Of course, it would naturally occur to some acute mind to suggest that as it is not proved that anyone objected to an allowance to the receiver in the settlement of his accounts, for the outlay involved in the "courtesy" of furnishing transportation for judge Swayne, family, and friends, the judge's offense is condoned and can not be a ground for impeachment. Read about what happened to Davis and Belden and O'Neal, and wonder what would have been the fate of the hapless mortal daring to commit the awful "contempt" of questioning in Judge Swayne's court the propriety of Judge Swayne's use of the property of another, free of cost, for his own convenience and gratification! And then, this theory, logically applied, would abolish punishment for murder, for who could doubt the truth of the plea that the victim had not complained since he was murdered.

This is and for many years has been the law:

> A district judge shall be appointed for each district * * *. Every such judge shall reside in the district for which he is appointed, and for offending against this provision shall be guilty of a high misdemeanor. (Sec. 551, Rev. Stat.)

Swayne was appointed district judge for the northern district of Florida and his appointment was confirmed about the 1st of April, 1890. Judge Swayne says (record, p. 241) that he moved to St. Augustine in the summer of 1890. The boundaries of the northern district of Florida were changed in 1894, and ever since that change St. Augustine and Jacksonville have been in the southern district. Pensacola is and has been in the northern district. Judge Swayne further says (record, p. 241):

> I resided in St. Augustine with my family. * * * After a consultation with my friends in Jacksonville and vicinity they urged me not to move my furniture nor family, saying that the next Congress would be Republican and the district would be placed back in its usual form. My furniture was allowed to remain, and I went at once to Pensacola. I found a leading Democratic friend there, and I stated to him that I had concluded not to move my furniture there, and it was all understood by the people there. I was there for a considerable period, sometimes early in October and sometimes a little later, and I was there all the time I was needed unless holding court somewhere else. In 1890, in July, I went with my family to Europe. In the spring of 1900 I was holding court at Birmingham, where I had a great many friends, and after that I went to Pensacola and rented a house * * * moved there early in October.

According to his own story—to say nothing of any other testimony—Judge Swayne did not "reside" in his district from 1894, when St. Augustine ceased to be in it, until October, 1900.

But Judge Pardee, in the Pardee-Grosvenor letter, says:

> After his district was changed, in order to comply with the alleged spirit of section 551 of the Revised Statutes, it became necessary for him to dispose of his residence in St. Augustine and acquire and move to a residence in the western part of the State. In this respect, I am informed that he at once declared a residence and domicile in the western part of the State and followed that up with more or less activity by acquiring a house and other things, all taking four or five years.

Judge Pardee was informed that Judge Swayne "at once declared a residence and domicile in the western part of the State."

Here we have "absent treatment" applied to Judge Swayne's nonresidence malady. If efficacious in his case, there appears to be no reason why it may not be employed to advantage in many other cases, varying widely, according to the diagnosticians. Indeed, this benign treatment may prove to be the universal, never-failing cure-all, the like of which never yet appeared—that is, prior to Judge Pardee's discovery and his associate's announcement—even in the most promising of "patent" medicine nostrum advertisements.

Why might not Judge Swayne reside until his dying day in Guyencourt, Del., having "declared a residence and domicile" elsewhere? Would not that do in the way of compliance with the "alleged spirit" of section 551?

Who can find excuse for being poor when he can "declare" wealth; hungry when he can "declare" food to his taste; naked when he can "declare" raiment fit for a Solomon?

Judge Pardee is likewise informed that Judge Swayne not only "declared" a residence and domicile, but that he actually "followed that up with more or less activity by acquiring a house and other things, all taking four or five years."

How comprehensive the expression "with more or less activity!" As we dwell upon it the fetters of time, place, and circumstance seem to drop away, so that each one may feel free to train his own eyes of the mind upon Judge Swayne, and measure for himself the average rate of speed with which Judge Swayne moved, "with more or less activity." To be sure, the detailed information conveyed by those other words—"all taking four or five years"—is important and helpful.

In "four or five years"—what are a few years between friends—proceeding "with more or less activity," Judge Swayne succeeded in acquiring "a house and other things" in his district; just what "other things" we do not know.

Now, take the case of O'Neal. Some gentlemen, forgetful of the facts, talk about this being a political prosecution, saying that but for the pursuit by O'Neal of Judge Swayne, on account of the contempt proceedings against O'Neal, there would be no complaint or effort to impeach. What about the O'Neal case?

I am aware that a gentleman speaking on this side, in the plentitude of what he would have us regard as generosity, magnanimously agreed with the gentleman from Maine [Mr. LITTLEFIELD] in the conclusion that there is absolutely nothing in the O'Neal case; that it has been demonstrated that there is nothing in it. And yet, Mr. Speaker, may we enjoy a little

while longer the privilege of believing that there is something in it? May we still indulge the conviction that a great judicial outrage was perpetrated when O'Neal was adjudged guilty of contempt and, in violation of law, was sentenced to be confined sixty days in the county jail?

No man can read what the gentleman from Maine attached to his remarks as an exhibit—the record of proceedings in this case of O'Neal—and draw the conclusion from it that O'Neal was really prosecuted for a contempt or found guilty of a contempt. The judge discussed self-defense. What has self-defense to do with the matter of contempt? The judge discussed the credibility of witnesses. What has that to do with the matter of contempt? I venture to say that if you could convict any justice of the peace in any township in any county in the United States of as gross ignorance in admitting testimony, as gross perversions of the law, or as gross abuse of power as Judge Swayne exhibited in this case, as this record discloses, that justice of the peace would be disgraced in the community and would surely be defeated, if a candidate for reelection, for dishonesty or incompetency or both combined. [Laughter and applause.]

O'Neal was compelled to testify whether or not he had been arrested and had pleaded guilty to a charge of carrying concealed weapons; whether he had been charged with an assault and had been convicted or had pleaded guilty. What had that to do with the question of whether or not O'Neal committed a contempt? What warrant could there be for the introduction of testimony about Greenhut being a man of peace?

The statute is plain, and the House is or ought to be and can be familiar with its provisions.

That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempts of court shall not be construed to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of the said courts in their official transactions, and the disobedience or resistance by any officer of the said courts, party, juror, witness, or any other person or persons, to any lawful writ, process, order, rule, decree, or command of the said courts. (R. S. 725.)

That if any person or persons shall, corruptly or by threats of force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall, corruptly or by threats of force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding $500 or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offense. (R. S. 5399.)

Study it and analyze it; pick at it letter by letter, word by word, clause by clause. I defy any man, I care not who he is, to find in that enactment any power in any court to punish summarily as for contempt anybody for anything shown to have been done by O'Neal. That O'Neal might have been indicted by a Federal grand jury if it had seen proper to indict him is conceded; but is the grand jury to be dispensed with? Yes, if Swayne's conduct in the O'Neal case constitutes "good behavior;" if he may be held guiltless, notwithstanding this usurpation, this tyrranous abuse of power, then the grand jury may be swept away. But if gentlemen have any regard for this law, passed almost seventy-four years ago, enacted by men long since gone from this scene of action, to restrain just such judges as Swayne, they must hold that a judge can not with impunity do arbitrarily under a charge of contempt what might be done legally upon indictment. If this law can be disregarded, and if gentlemen can justify themselves in voting to sustain a man who disregards it, we have reached the farce stage. Are we where men suffer their prejudices to run away with judgment and stifle conscience, where reason does not guide, and justice does not control?

Let us look at the case of Belden and Davis. A good many gentlemen have proceeded upon the assumption that this judge acted most excellently in that case.

He had purchased some lands, part of which was embraced within a tract concerning which suit was pending in his court. He was asked on account of that to "recuse" himself, using a word, as I understand, from the civil law—in other words, to step aside and let another judge try the case. Let me pause a moment at this. Gentlemen proceed as though it was an outrage to ask him to do that, as though dropping that transaction is enough—we may assume that he dropped it; we do not know, the assumption may not be well founded—but let us assume that he did drop it. Is that enough?

Suppose one were called to sit as a juror in a case, and it should appear that he had been dealing with the subject-matter of the litigation, and suppose that a litigant were to challenge him and ask that another who had not necessarily and inevitably made up his mind, at least tentatively, with regard to a portion of the very issues upon which he would have to pass take his place—what then? Would the juror only have to say, "Why, I quit this deal just as soon as I found that I had been summoned upon the jury?"

What would the judge say about it? Would he say, "Oh, gentlemen, that objection does not amount to anything; this juror says that just as soon as he learned that he was on the jury he ended the transaction in which he was engaged; he is perfectly competent to try your case?" Suppose the entire panel were made up of such jurors, and suppose that, over your objection, your case went to trial before that kind of a jury, do you doubt what a court of review would say? But the poor, humble little juror—everybody knows he would be excused—would be regarded as disqualified, because he had looked into the matter and knew about it or had information about it, having investigated it to a certain extent. Of course, he would be "recused" anywhere, unless it might be in Judge Swayne's court—I could not tell about that. But when it comes to the Judge—say nothing about common fairness, or the rights of clients or lawyers!

Now, were these lawyers wrong in concluding that Judge Swayne was not the right man to try their case, taking the surroundings and everything into consideration? Why did he insist upon sitting in a case in the essence of which he has been mixed and involved? Perhaps we can get an answer when we view the subsequent course of the leading attorney for the defendants, himself a party in interest in the suit. As we know, this is the case of Florida McGuire against the city of Pensacola and others. Immediately following the dismissal, proceedings for contempt were instituted against Davis, Belden, and Paquet, the lawyers for the plaintiffs. They were instituted after a conference between this judge and this leading lawyer for the defendants, and himself one of the defendants in the Florida McGuire suit—begun by that lawyer and defendant.

Ordinarily—I do not know how it is in Judge Swayne's court; I know not whether there is some peculiarities about the climate of Florida which makes it different there—ordinarily a defendant in a case is content when a plaintiff dismisses. The plaintiff dismissing his suit, the defendant in ejectment is left in peaceful possession of the premises sued for. Usually a defendant wishes simply to be let out of court with costs. He defends only to prevent the plaintiff from prevailing against him. When the plaintiff dismisses there is an end of that suit—the defendant goes free.

But these plaintiffs brought suit in a State court against Judge Swayne, and how great the outrage! How sublime the indignation of gentlemen over this proceeding against a judge! Ah, they sued the judge! They knew there was no case, and the judge, according to the language which he himself uses, felt compelled to defend the dignity of his court!

I think, Mr. Speaker, that I can see a very simple and plain way of preserving the dignity of that court, a course by which its dignity would have been emphasized, by which dignity would have been acquired by it. If this suit against Judge Swayne was groundless and baseless, it was only necessary for Judge Swayne to interpose his plea, appear in his own defense and drive his assailants out of court through a voluntary dismissal, or by a judgment of the court, proving to an obsolute demonstration that the action against him was groundless and baseless. Then the dignity of the court would have blossomed and bloomed in a way far different from that conceived and brought about by this judge.

I am not assuming to be a great lawyer, though I really believe, Mr. Speaker, after the assumptions in that line, almost anybody at this time and under these circumstances in these proceedings might safely assume that he is a great lawyer—I am not assuming it however—but I advance the proposition, that there is no contempt and can be no contempt without the doing of that which is wrong. Is that proposition correct or is it not? If you do what you have the right to do, if you do that which violates no law, rule, or order, if you do that which violates no duty, you can not be guilty of contempt. Now, was there a legal right to bring suit against Swayne in the State court? No man questions it. The reason I think it is not questioned in argument in this matter is that Judge Swayne in an unguarded moment himself conceded the right, and therefore his eloquent apologists are hampered, and do not feel like going back upon the confession of Judge Swayne; otherwise I have no doubt that hours would be consumed in the effort to make it appear otherwise.

Well, they did sue Judge Swayne, and had a right to sue him. They agreed at the time of bringing that suit that they would dismiss the other suit in Swayne's court—would do for the defendants what defendants pray for. But the defendants desired a trial by Judge Swayne! Why? Are there no other judges in that region of country? If Judge Swayne had recused himself, like a gentleman and a judge, like a man proud of his

position, proud of his honor, despising to stain either; if Judge Swayne had said, "Gentlemen, of course I will not try this case"—then I think there would have been found another judge. But he might not have answered so well the purposes of the defendants; he might not have been a judge so completely to their liking. Was there any reason for a contention and insistence upon Judge Swayne trying that case except a bad reason, a reason that a man will not avow?

Why, there was Judge Locke, in the same State, of the same politics, but of a different stamp; a judge, it is said and not denied, of upright conduct, who, by following the path of the law and of judicial gentility and decency, has endeared himself to the community where he lives and labors. He might have been called in. Another judge might have been called in from another State, and the Florida McGuire case might have been disposed of without the stain and the shame of forcing a party to trial under a judge who was deeply interested—just how deeply and how far, by what means and for what purpose, upon his part and upon the part of those who dealt with him—that is something which I do not know and you do not know. Decency required him to step aside, judicial morality required it, the interests of justice required it, but he would not.

True it is that he said he didn't take a quitclaim deed when he bought land the title to which he was determined to try! How praiseworthy! Oh, noble judge; oh, righteous jurist; oh, lofty paragon of what is to typify or may typify judicial morals in this country! As soon as he finds he has been dealing with the subject-matter of a suit pending in his court he quits it and insists upon trying the case! And then the conduct of these attorneys—they did not apologize, they did not crawl and cringe; they seem to have been made in the image of their Maker; they seem to have had the pride of conscious honesty; seem to have been sustained by the courage of decent manhood!

No; they did not cringe and crawl. Belden, with his seventy years of honorable life behind him, sick and afflicted, sore and suffering, went to the common jail, a victim of the tyranny of this outrageous judge, rather than bow the knee before the tyrant and humbly lick the hand that unrighteously smote him. They might have said to his august majesty, "Oh, pray forgive us; we knew not what we did; we know not what we do; great and mighty judge, what concern is it that you have been dealing with the subject-matter of this suit; away with our professional pride and our duty to our clients; perish all of them, rather than risk your wrath, rather than be the victims of your judicial dspleasure, of your great, magnificent, and glorious judicial power!"

They did not do it. And it is an honor to the bar of the Union, an honor to our profession, an honor to humanity, that they did not.

But gentlemen read a little note signed by Mr. Paquet some months afterwards. Paquet went to New Orleans, called away by the sickness of a member of his family, and Davis, unfortunately, got into the case as a kindness and service to a brother attorney. Paquet comes back later and files something which they call an apology, and the judge says in his statement and testimony that he dealt leniently with Paquet when he filed this, and let the matter drop, and that if Belden and Davis had done as Paquet did he would probably have disposed of them in the same way. Swayne says they talk about malice in his brutal treatment of Belden and Davis, but that if he had been malicious why would he not have imposed a punishment of ten months instead of ten days in jail? Behold the magnanimity! Behold the bright light and glory of judicial charity and forgiveness!

Swayne did impose a sentence of ten days in jail and a $100 fine, with disbarment for two years—not very severe, I suppose; he did not mean much by it, just a little friendly admonition, as much as to say, "Boys, you have gone too far in this, and I must pull in the reins a little on you. I must call a halt." Ah, charity!

Charity does cover a multitude of faults, I suppose. The mantle is ample. It is stretched overmuch, perhaps, as all of us have need of it; but how bright and good it must be, how extensive, if it can cover such malefactions in law, such disregard of duty, such perversion and abuse of power.

Belden and Davis were adjudged to pay a fine and undergo imprisonment, when by the law but one of these penalties could be imposed. The judge did not know the law, they tell us. Well, I do not know whether he did or did not. He imposed an unlawful sentence. He took jurisdiction where he did not have it, and wantonly and cruelly did what he could not lawfully do in any contempt case.

Now, Mr. Speaker, not only have we this Pardee letter, through the kind officiousness and busybodyness of our good friend from Ohio, but we find that Judge Pardee figured in this case. We find that the application for the writ of habeas corpus was presented to Judge Pardee and the writ sued out before him, and Judge Pardee thought that Swayne's victims could do one of the two things; he held that the sentence was illegal and that they could take their choice between paying the fine and undergoing the imprisonment. Possibly here is a little explanation of why Judge Pardee breaks in.

And there we have it. The falsification of accounts, the wrongful use of property in the hands of his receiver, the wanton exercise of arbitrary power in the case of O'Neal, the like exercise of arbitrary and unwarranted power in the case of Davis and Belden, positive, protracted violation of the residence statute; and yet there will be no impeachment if political prejudice can prevent it. No impeachment! This shall go, it shall pass as the idle winds that blow over the fields and are gone—if prejudice can prevail.

The time will come when what we do here will be analyzed; and if this impeachment fails, the man who reads the story of this day and this occasion, set down with the impartiality of the historian, will read that Swayne was justly impeached, or that impeachment failed, not because Swayne had not done much to warrant impeachment, but because enough gentlemen, in the blindness of partisan hate and partisan zeal, prevented impeachment.

Mr. Speaker, that would be an impeachment as long as time shall last, as long as these records shall endure, of the men who bring about that perversion of justice, if they do. We will then have passed from the question of the impeachment of Swayne and we shall be where history impeaches the men who fail to impeach Swayne. They will have impeached themselves; and after our period of service here shall have ended and we shall have been gathered to our fathers, when the record of this day is read there will be found impeached at the bar of history, impeached at the bar of conscience, impeached before the tribunal of high and patriotic duty, the men who allow blind partisanship to prevent the impeachment of the judge who deserves impeachment; who, if he be shielded, will be shielded because Members shrink from doing their duty, as he perverted and abused the power to do his. [Loud applause on the Democratic

Mr. GILLETT of California. I yield five minutes to the gentleman from Pennsylvania.

Mr. PORTER. Mr. Speaker, I regret that I can not hope to throw light upon this subject. The distinguished gentleman from Pennsylvania [Mr. PALMER], the chairman of this committee, spoke the other day of this body as a body of lawyers. The same remark has been made this afternoon by the distinguished gentleman from Missouri [Mr. DE ARMOND], and I think that the House is open to this impeachment. There are very few in this House who have not had the benefit of legal study and fortunately many have great knowledge of the law. For the last three days I have sat here and listened to lucid explanations in regard to the law, so that we could intelligently act upon this subject, this important subject that is now before us. I think it is very evident that there are many laws which any one of us might interpret for ourselves and which seem clear, that are very differently interpreted by other men, very differently interpreted by the courts, and on which there may be honestly a great difference of opinion. It seems to me, as a business man and not a lawyer, that there might be great improvement in this respect, and that laws might be written so clearly—I believe business men could do it—that there would not often be two interpretations possible.

On the 13th of December the House voted to impeach Judge Swayne. At that time the distinguished gentleman from Florida [Mr. LAMAR] said, as I find it in the RECORD, that "the entire Judiciary Committee of this House submits the resolution to impeach the judge, and I assume, therefore, that the resolution to impeach will be voted upon affirmatively." He says, "When it comes to the further question of specific charges, I shall ask to prefer the charge, and conclusively to prove it to every fair-minded man in this House, that he is a tyrannical and a corrupt judge."

I deeply regret that I was not present yesterday afternoon when the gentleman from Florida [Mr. LAMAR] spoke; but I presume he attempted to "conclusively prove that Judge Swayne was a tyrannical and corrupt judge," "to every fair-minded man in this House." I have asked some who were present, whom I believe to be fair-minded, and they tell me that they were not convinced. Nor have I been convinced by this whole discussion of such tyranny or cruelty on Judge Swayne's part.

I wish to say, further, that after the vote had been passed, after the previous question had been ordered, there was still an earnest desire on the part of many to arrive at a conclusion, so that they could vote with intelligence. When the previous question was ordered by a vote of 198 to 61, that did not seem

to me, as a business man and not a lawyer, it did not seem to me a desire to arrive at the true merits of the question.

But later on that same day, December 13, Mr. PALMER said that the committee to formulate charges will "report to the House articles which, in their opinion, can be sustained by the testimony, and then the House can intelligently pass on the subject." Could a plainer statement well be made that up to that time few Members could have been expected to form any very intelligent opinions upon it? The distinguished gentleman further emphasized this idea by saying also in the same paragraph that "it must be obvious to every Member of the House that the Judiciary Committee is hopelessly divided on this question as to what Judge Swayne should be impeached for." And yet in all this confusion of thought in the committee itself and in the House, the previous question had been demanded by a large majority. The suggestion that Members have since been influenced to vote against these charges by partisan motives, comes with ill grace, I think, from the other side of this House who joined in ordering the previous question at that time and who have acted with practical unanimity ever since on this whole matter.

And now, Mr. Speaker, it is because I have not been convinced that these charges, as presented and explained, are a sufficient basis for impeachment that I must vote against them.

The SPEAKER pro tempore (Mr. GARDNER of New Jersey). The time of the gentleman has expired.

Mr. PORTER. May I have permission to extend my remarks in the RECORD?

The SPEAKER pro tempore. The gentleman from Pennsylvania asks unanimous consent to extend his remarks in the RECORD. Is there objection? [After a pause.] The Chair hears none.

Mr. PALMER. Mr. Speaker, I ask unanimous consent that all gentlemen who have spoken upon this question may have leave to print pertinent remarks in the RECORD for five days.

The SPEAKER pro tempore. The gentleman from Pennsylvania asks unanimous consent that all Members who have spoken upon the pending resolutions have the consent of the House to print for five days remarks pertinent to them. Is there objection? [After a pause.] The Chair hears none.

Mr. GILLETT of California. I yield five minutes to the gentleman from Ohio.

Mr. GROSVENOR. Mr. Speaker, I do not rise to restate or reargue any of the questions involved in this impeachment; but I will turn aside for one half minute to congratulate the House that the distinguished gentleman from Missouri [Mr. DE ARMOND] has abandoned partisanship and has finally risen to the high plane of nonpartisanship in this contest. [Laughter and applause on the Republican side.] That gentleman has seen fit to illustrate his nonpartisan argument by claiming that some of us on this side have argued that where a man is charged with a larceny or robbery we claim that it is competent evidence to prove that others committed larceny and robbery in order to vindicate the man on trial.

That is a specimen of nonpartisan argument. What we have claimed was that in the construction of a doubtful statute usage and contemporaneous construction are not only competent to be proven, but are conclusive of the law of the construction. I have been furnished by a gentleman with some very pertinent authorities, not weighty with the gentlemen who make such an argument as that, but weighty, I trust, with every intelligent lawyer on this floor.

The question now is simply this: Was Judge Swayne authorized and justified to put the construction upon this statute that he did by contemporaneous construction of court, lawyers, and the Department through which his vouchers passed? And, secondly, if he was, was he entitled to prove it, and was the deprivation of him from the right to prove it error and wrongdoing that ought to set aside this impeachment?

I cite a very considerably respectable authority upon this question, and it was, mind you, a question on all fours with this, as I will show. This comes from Judge Story. Judge Story, in the absence of the opinion of the gentleman from Missouri [Mr. DE ARMOND], would have been considered quite a lawyer. In his day he was. He said:

> I own myself no friend to the almost discriminate habit of late years of setting up particular usages or customs in almost all kinds of business and trade to control, vary, or annul the general liability of parties under the common law as well as under the commercial law. It has long appeared to me that there is no small danger in admitting such loose and inconclusive usages and customs, often unknown to particular parties and always liable to great misunderstandings and misinterpretations and abuses, to outweigh the well-known and well-settled principles of law. And I rejoice to find that of late years the courts of law, both in England and America, have been disposed to narrow the limits of the operation of such usages and customs and to discountenance any further extension of them. The true and appropriate office of a usage or custom is to interpret the otherwise indeterminate intentions of parties and to ascertain the nature and extent of their contracts arising not from express stipulation, but from mere implications and presumptions and acts of a doubtful or equivocal character.

Now, I want also to call attention to an extract from an argument by Mr. Blaine upon the subject of the impeachment of Andrew Johnson:

> Perhaps the best test as to whether the act of the President in removing Mr. Stanton was good ground for impeachment would be found in asking any candid man if he believes a precisely similar act by Mr. Lincoln or General Grant or any other President in harmony with his party in Congress would have been followed by impeachment or by censure or even by dissent. It is hardly conceivable, nay, it is impossible, that under such circumstances the slightest notice would be taken of the President's action by either branch of Congress. If there was a difference of opinion as to the intent and meaning of a law, the general judgment in the case supposed would be that the President had the right to act upon his own conscientious construction of the statute. It might not be altogether safe to concede to the Executive the broad scope of discretion which General Jackson arrogated to himself in his celebrated veto of the bank bill, when he declared "that the Congress, the Executive, and the court must each for itself be guided by its own opinion of the Constitution. Each public officer who takes an oath to support the Constitution swears that he will support it as he understands it and not as it is understood by others." But without approving the extreme doctrine which General Jackson announced with the applause of his party, it is surely not an unreasonable assumption that in the case of a statute which has had no judicial interpretation and whose meaning is not altogether clear the President is not to be impeached for acting upon his own understanding of its scope and intent. Especially is he not to be impeached when he offers to prove that he was sustained in his opinion by every member of his Cabinet, and offers further to prove by the same honorable witnesses that he took the step in order to subject the statute in dispute to judicial interpretation.

Now, there is an authority quoted with approval. That is exactly on all fours with this case, and it shows, gentlemen of the House of Representatives, that this defendant was deprived of a legal right when he sought to prove that this statute had had not only a judicial but a departmental approval and interpretation, and that alone would be sufficient to reverse the judgment in any court in the country. [Applause.]

First, then, I add this defendant was refused by the peremptory and bullying treatment of a member of the subcommittee the privilege of proving what he could have proved, that there is a uniform and universal consensus of construction of this statute which gave to him and to all the judges of the United States this allowance in lieu of their expenses. That was what the statute was passed for. That was the understanding when it was passed. That was the earliest and uniform construction of it. That was the meaning of the statute, as interpreted by the courts, by the Departments, and by Congress. There is nothing plainer. Why, gentlemen, if this man had been convicted of murder with such a blundering, vulgar ruling upon a law question as the one under consideration, there is not a court in the United States that would not have reversed the finding of the jury and remanded the case for a new trial, and yet you are asked to shut your eyes to known facts and to proceed with this impeachment that can have but one result, and that result is an honorable acquittal.

But it is said that the friends of Justice Swayne have dragged politics into this question, and the distinguished gentleman from Pennsylvania [Mr. PALMER] shouts a battle cry of the Democratic party as he rushes frantically about the Hall of the House appealing for votes. Observing a slight weakness on the Democratic side of the House, he shouts: "Turn the rascals out!" That is the battle cry of the Democratic party. It rang from Maine to California during the recent campaign. "Turn the rascals out," says the gentleman from Pennsylvania. "Turn the rascals out" for what; and who are they? "Turn the rascals out" who have taken $10 a day in lieu of their expenses in traveling as judges of the United States courts. If you turn one rascal out you better turn all the rascals out, and let this distinguished gentleman, leading a pure-in-heart crusade, advancing under the battle cry of "Turn the rascals out," assail the courts of the United States and assail the judges wearing the pure ermine of their high office, assail them and refuse to permit them to prove the construction put upon this law by Congress, the construction put upon this law by the Departments, the construction put upon this law by all the judges who have construed it.

Mr. Speaker, there can be but one result—a long, tedious, and vexatious trial in the Senate, the defeat of most of the measures which the country requires and demands so earnestly, no time to legislate upon railroad rates, no time to legislate in favor of the upbuilding of the American merchant marine, no time for anything, but to "turn the rascals out."

We shall see what we shall see, and when our managers come back from the Senate, trailing the flag of partisanship and persecution in the dust of overwhelming defeat, we shall understand then better than we understand now the principles of law governing this case and the elements of hate that have entered into it.

Mr. GILLETT of California. Mr. Speaker, I now yield the remainder of my time to the gentleman from Massachusetts [Mr. GILLETT].

Mr. GILLETT of Massachusetts. This debate reminds me of a witticism of Sheridan—not our Sheridan, but Richard Brindsley. In one of his speeches he alluded to Gibbon's History, then just published, as the "luminous page of Gibbon." The author, meeting him at dinner the next day, thanked him for the striking and flattering allusion, and after courteously accepting it, Sheridan turned to his neighbor and whispered "What I really said was '*vo*luminous.'" I do not mean to intimate that this debate has not been luminous—I think it has. I think all phases of the issue have been illuminated and exhausted, and I do not imagine, in now closing for this side, I can add any new features, but the impressions of one who is not on the committee, and consequently has not undergone the stress of the contest which has obviously raged there, may be helpful.

I suppose we will all agree that upon a question like this, where the House acts in a judicial capacity, we ought to aim at an impartial and judicial state of mind and come to a decision unaffected by personal or political prejudice. I have endeavored to take that appropriate position, but I will not pretend that I am certain that I have been able to rise above all prejudices. When I first learned that the Democratic side of this House was unanimous and intense for this prosecution I am afraid that, under the circumstances existing in Florida, a suspicion was aroused in my mind that this was a political and not a judicial prosecution.

I was amused yesterday to have a friend on the Democratic side remark to me that he was glad that whatever the result it would not be effected by a partisan vote. I asked him if any Democrats would vote against the impeachment, and he said he thought one would, but the Republicans would be divided. That seems to be the Democratic idea of nonpartisanship—a solid Democratic vote and the Republicans divided—that is the sort of nonpartisanship we have generally witnessed when questions of a judicial nature such as election cases have come before the House, and I must confess I weary of it. But despite the lack of encouragement from the other side, I have endeavored, I know not how successfully, to be uninfluenced by partisanship. Reading the reports of the committee tended to excite another bias in favor of Judge Swayne from quite a different reason. That committee, in the consideration of the question whether a judge had comported himself with becoming dignity and temper and uprightness, would naturally be scrupulous to itself display the high judicial qualities it demanded from him. I do not think anyone can read the report of the committee and the speeches in support of it without feeling that impartiality was not one of its characteristics, and that however Judge Swayne may have failed in judicial fairness and decorum the tribunal which was trying him could not be recommended to him as a pattern or exemplar.

But trying to throw off the bias occasioned by the conduct of his opponents, the first feature that impresses me is the contrast between the proposed tribunal and the evidence. It seems to me the step from the sublime to the ridiculous will be well illustrated by the impressive and high-sounding charge "in the name of the House of Representatives and of all the people of the United States we impeach Charles Swayne of high crimes and misdemeanors" pronounced before the most august tribunal known to our Constitution, and then the trivial, petty, insignificant details of the evidence. And this is all that thirteen years of active, eager hatred could assemble against him.

I have not time now in these closing moments of this debate to discuss this evidence, and it has all been most thoroughly weighed and dissected, and in my opinion it fails lamentably to support the sounding charge.

I wish to say a special word, however, upon the only charge which has the unanimous report of the Judiciary Committee—the making of a false certificate.

When evidence was offered before the investigating committee to show that other judges had done the same, it was excluded by the chairman on his own motion. Under the technical rules of law that was doubtless allowable. But if it was true that a majority of the judges interpreted the law to permit what Judge Swayne did, I do not think any but an inveterate and unreasonable enemy would impeach Judge Swayne for it. The chairman of the committee in his speech, and this illustrates his temper and moderation, declared, "There is not a syllable of testimony in this record and not a syllable of testimony anywhere on earth that any judge ever did this thing but Judge Swayne. That is what I say. I say it on my responsibility as a Member of this House." That statement is on the face of it preposterous, an evidence of extreme bias, for unless the gentleman is gifted with omniscience he can not know that no such evidence exists. As a matter of fact I know that such evidence does exist and that the gentleman in his solemn asseveration is not only guessing, but is guessing wrong. I know that a certain judge was given the certificate to sign by the marshal, and said he had not spent $10 a day. The marshal assured him the custom of the judges was to certify to $10 regardless of their actual expenses, and quoted to him the names of judges of whom it might be said, in the graphic language of Macaulay, "names which would add authority to truth and furnish some excuse even for error." The very fact that two-thirds of all the judges do certify to exactly $10 is of itself sufficient to my mind that Judge Swayne's conduct corresponds with that of a majority of the bench. I do not think it is a fair or proper construction of the law. I do not think, now that attention has been called to it, the practice will be continued. But I do not think we wish to commence a general impeachment of our Federal judiciary, or that we wish to condemn Judge Swayne for an act shared in by a majority of his brethren.

I do not wish to be understood as approving all Judge Swayne's conduct. I think he has shown a lack of judicial moderation, self-restraint, and impartiality. I fear his usefulness on the bench of Florida has ended. But mere unpopularity is not ground for impeachment. The fault may not be wholly his. It is most unfortunate and regrettable. I think I deplore it as much as anyone, for in my own State the whole bench of the United States and the supreme and superior courts of the State have the regard and respect and unreserved confidence of all our people without distinction of class or party. It ought to be so everywhere. You remember the famous sentence of Daniel Webster, "When the spotless ermine of the judicial robe rested on John Jay, it touched nothing less spotless than itself." That is the type of judge we all wish to see on every bench. Judge Swayne falls far below it. If the question were to appoint him, I would oppose it; if it were to transfer him to another field, I would support it; if it were to accept his resignation, I would eagerly approve it; but I can not vote for his impeachment because I think the evidence is too stale, weak, and trivial to support that stately charge. [Applause.]

Mr. PALMER. Mr. Speaker, I have been in doubt for some days as to who is on trial in this case, whether it is Judge Swayne or the chairman of the subcommittee, the gentleman from Pennsylvania. I remember that when I used to practice in the criminal courts a good many years ago, the criminal lawyer who had an especially bad case and had no defense for his client always tried the prosecuting attorney, or the witnesses on the other side, or somebody else except the defendant. It was always an evidence, whenever the prosecuting attorney was particularly attacked, that the defendant had no defense. That seems to my feeble comprehension to furnish the reason why so many distinguished gentlemen who stand on this floor to apologize for Judge Swayne's conduct have found it necessary to assail the chairman of the subcommittee.

I had intended to pay my compliments to the gentleman from Maine [Mr. LITTLEFIELD], but the time that I have left is not sufficient to do that. [Laughter.] I shall endeavor to put into the RECORD some explanation of the charges that he has seen fit to make against the subcommittee and against myself. I do it not because they are of any special importance, not because I care particularly what his opinion is, but because this record will live after we are gone and when we are dead, and I do not purpose that the reputation of the subcommittee or my reputation shall be "done to death by slanderous tongues."

I am sure the committee strove laboriously and conscientiously to do their duty according to the best of their ability. It seems that in the opinion of the gentleman from Maine we failed. That, however, is not particularly important.

In view of the fact that the gentleman from Maine has seen fit to endeavor to create the impression that the subcommittee of the Judiciary that took the testimony in this case has left out of the record evidence favorable to Judge Swayne, and that the record is not complete, I want to state the exact truth of the whole matter.

He says, "I do not want to make any reflection on anybody, but I will say this: So far as I have been able to inquire every document apparently missing, or that has been lost in the shuffle, happens to be a document that would make for the interest of Judge Swayne. Now, I do not say that anybody suppressed them on that account. I am simply calling attention to the fact, and it is a fact, and an unpleasant fact."

The gentleman from Maine does not make a direct accusation that the subcommittee, or anyone on it, suppressed any testimony or document, but by an innuendo he endeavors to create that impression.

The particular document referred to by the gentleman from Maine, when the above statement was made, was a transcript of the stenographer's notes of testimony in the O'Neal contempt case taken before Judge Swayne. It appears by the record that Benjamin S. Liddon, esq., counsel for complainants, states in his written brief, as follows:

OPPRESSION OF W. C. O'NEAL IN ALLEGED CONTEMPT CASE.

In this case I file stenographer's report of the evidence.

Whether he did in fact file such report I am unable to say. I never saw it. Mr. GILLETT says he did see it. It certainly was never read, opened, or alluded to by Mr. Liddon. When the record was prepared for printing by Mr. GILLETT and myself, under the direction of the committee, a great deal of matter, consisting of records in bankruptcy and admiralty cases, journal of the Florida legislature, etc., which were not of the slightest importance to anybody, were omitted, because to print them would impose a large and useless expense on the United States.

The particular document in question was not printed because it was not among the papers.

Of course, the only point of importance is, was it a paper the absence of which could be hurtful to Judge Swayne? As it was produced by the complainant's lawyer in support of his argument against Judge Swayne, presumptively, at least, it would make against and not for Judge Swayne, unless Mr. Liddon, complainant's lawyer, who produced it, was grossly incompetent. I do not think anyone will make that charge against Mr. Liddon. He has been chief justice of the court of appeals of the State of Florida, and is certainly an estimable gentleman, as well as an accomplished lawyer.

But all doubt on the subject is removed by the production of the document itself by the gentleman from Maine. It was produced to convict me of making a false and misleading statement in the majority report, page 21, where it is said:

The testimony of Greenhut and O'Neal was taken. None of the bystanders were sworn, nor was any other person sworn.

The record before me when that statement was made was a statement by Judge Liddon, who had filed the testimony taken before Judge Swayne as a part of his argument, as follows (page 253):

No eyewitness of the difficulty testified, but only the two participants, O'Neal and Greenhut.

The record of the evidence taken on the trial of O'Neal now produced sustains that allegation in the main. The fight commenced in Greenhut's store, no one being present. Before it was over O'Neal and Greenhut were out on the sidewalk clinched. The persons who separated them did testify. No person saw or testified to what was said or done when the fight commenced inside the store, which was the material evidence.

That is the whole story, and with all the facts before him, the gentleman finds sufficient to warrant him in making the following statement:

Well, that would leave the case to depend altogether on Greenhut and O'Neal, and leave the impression, I submit, from the report of the gentleman that the court did not take the pains, and nobody else had taken the pains, to present all the facts. The gentleman suggests that the bystanders were not sworn. I do not see why the suggestion was made unless it is to question the propriety of the action of the judge.

The record now presented by the gentleman from Maine contains the opinion of Judge Swayne in the O'Neal case, and in it he says (page 821, CONGRESSIONAL RECORD):

No living witness testified to what he saw, except the two parties.

Which is, as it seems to me, a perfect justification of the statement made in the report.

I submit that the gentleman from Maine could not have read the record which he produced to convict me of having made an unfounded statement for the purpose of prejudicing Judge Swayne's case or he would not have used it for that purpose. If he did not read it he stands convicted of a willingness to carelessly defame me and carelessly mislead this House. If he did read it it convicts him of suppressing the fact, shown by Judge Swayne's opinion, that the case did, as to the material facts, rest entirely upon the testimony of Greenhut and O'Neal, and that, in the language of the judge, "no living witness testified to what he saw, except the two parties."

The gentleman from Maine is at liberty to accept either horn of the dilemma.

As to the more serious charge "that every document apparently missing, or that has been lost in the shuffle, happens to be a document that would make for the interest of Judge Swayne," I am content to refer the curious to the document in question, which is the only one specified as having been omitted, viz, the testimony taken in the O'Neal case, and the opinion of Judge Swayne.

If anyone takes the trouble to look he will see that Judge Swayne found the testimony of O'Neal and Greenhut as to what brought on the fight and as to who was the aggressor in irreconcilable conflict, and proceeded to settle the dispute in Greenhut's favor by reference to testimony of Greenhut's character as a peaceable man. This testimony had been offered by Greenhut himself and admitted most improperly against the vigorous protest of Blount, his counsel, who has been justly lauded as an able lawyer. Blount objected as follows:

Q. Are you acquainted with Mr. A. Greenhut?—A. I am.
Q. Are you acquainted with his reputation for peace and quiet?
Counsel for respondent objects to question upon the ground that his character for peace and quiet can not be put in evidence until it is attacked.

COUNSEL FOR PROSECUTION. If your honor please, as we understand it, the answer in this case charges acts on the part of the prosecutor that in our judgement do attack his character for peace and quiet.

The COURT. I understand that to be the character of the defendant's defense, is that he was attacked by a stronger and more powerful man, and one of his excuses set up in his defense. The question is whether it will be offered at this time or later.

COUNSEL FOR RESPONDENT. It does not make any difference now whether it is to be offered now or later. I had just as leave take my exception now.

We make another objection to this testimony, may it please the court, upon the ground that there is no issue made of the general character of Mr. Greenhut for peace and quiet, and that character of any kind can not be offered in evidence unless it has been attacked or impeached by the opposing side. We understand that your honor overrules it, and we save the exception.

COUNSEL FOR PROSECUTION. For the purpose of saving time, Mr. Blount consents, subject, of course, to his exception to your honor's ruling as in this witness, that the other character witnesses who have been summoned here will testify that they each know the reputation of Mr. Greenhut for peace and quietude, and that they would testify to the same and will testify that his reputation is that of a peaceable and quiet citizen.

Judge Swayne thought evidence of Greenhut's character as a peaceable man was competent because O'Neal intended to defend on the ground that "he was attacked by a stronger and more powerful man." How the peaceable character of Greenhut would tend to elucidate the question whether Greenhut was stronger and more powerful that O'Neal is not apparent.

Against the peaceable character of Greenhut, which this evidence established, the judge set off the bad character of O'Neal, who was forced to testify, against the protest of his counsel, that he had been convicted for carrying concealed weapons and had pleaded guilty of shooting across a public road, and had been sued by one Simmons for an assault and had judgment recorded against him for $50. And he thus found that Greenhut told the truth, and O'Neal did not tell the truth as to the origin of the affray, and as to who was the aggressor. Upon this finding Judge Swayne sentenced O'Neal, for contempt of court, to be imprisoned sixty days in the common jail.

This document is, in fact, a most damaging one to Judge Swayne. It convicts him of illiteracy, ignorance of law, and of a most flagrant abuse of his judicial power. Instead of insinuating that is was omitted from the record for the purpose of injuring Judge Swayne, the gentleman from Maine should return thanks that it was accidentally omitted.

Numerous, continuous, and persistent exceptions are taken by the gentleman from Maine to a statement in the majority report that Davis and Belden purged themselves of contempt on oath. I believe his statement was that I had made that statement five times, six times, and, in his speech as delivered, he said eleven times, thus rivaling Falstaff's tale of the men in buckram. He proves that I was wrong by pointing to the answer of Davis and Belden and showing that it was not sworn. I never said it was. I said the respondents purged themselves on oath. Simeon Belden testified:

Q. Did you file your answer—purge yourself?—A. Yes.

The gentleman from Maine now asserts and argues that the witness did not understand the question. Possibly he did not, but when the report, to which objection was taken, was made up, the committee did not have the benefit of the assistance of the gentleman from Maine. They relied upon the sworn testimony of the witness, and not upon the construction the gentleman from Maine might afterwards put upon it.

I intended also to make some observations, which I shall put into the RECORD, on the character and conduct of Judge Swayne, but time forbids.

JUDGE SWAYNE'S CONDUCT.

The conduct of Judge Swayne from the beginning to the end of this transaction has been most extraordinary. According to the testimony he had bargained for and concluded the purchase of a piece of land in Pensacola called "block 91." Nothing remained to consummate the transaction and vest the title in him or his wife, for whom he said he purchased the land, but the payment of the purchase money and the delivery of the deed. It must be presumed that Judge Swayne had satisfied himself in some way that the title to the land was good. He had either examined the title himself, had someone do it for him, or he had taken the word of some person in whom he had

confidence that it was good. He certainly must have entertained a firm belief that the seller had a good title, otherwise he would not have bought.

When it appeared that the title was in dispute and that a suit to settle it was pending in his own court, proper delicacy would have prompted him not to wait for a request to recuse himself; he should have told the parties at once that he had negotiated for the land, had formed an opinion on the question of the validity of Mr. Edgar's title, and therefore he could not bring an unbiased mind to the determination of the question.

Again, the purchase of the land was not consummated because the owner, Mr. Edgar, refused to give anything but a quitclaim deed. This was stated in a letter from his agent in Pensacola to Judge Swayne at Guyencourt:

In case the deed is not satisfactory to you, of course we will have to drop this deal or wait until you come home.

He wrote back:

You may omit block 91 and send papers for the other along.

What was there to prevent Judge Swayne from claiming his bargain after the suit was tried and the title of the seller established in his court? At least his decision to drop out block 91 was capable of being construed that for the present or until Edgar will give a warranty deed the transaction shall remain suspended.

Judge Swayne was guilty of great impropriety when he refused to get another judge to try the case. The counsel had good reason to hesitate about trying it before him. Why was he so insistent on trying the case? He certainly had a most excellent reason for declining to try. In accordance with his directions the agents had sent him a letter, as follows:

In reply to yours of the 22d instant we herewith inclose you new mortgage and note for you and Mrs. Swayne to sign, leaving amount blank in both mortgage and note. We inclose you receipts for the rent and fire insurance. You can fill in amount of mortgage and note.

The amount of cash payment was then left optional with Judge Swayne. It was a most extraordinary transaction. The agents were selling the land of their principal and allowing the buyer to fill in the blank in the mortgage left for the sum to remain on the property.

They were complaisant and Judge Swayne was friendly, evidently not averse to helping them settle the title to block 91, which he did later by giving a binding instruction for defendants, thus justifying the fear of plaintiff's counsel.

Judge Swayne did not state the facts truthfully when he said he abandoned the purchase when the agent wrote him that the land was in litigation in his court. The agent wrote nothing of the kind. The reason he directed them to omit block 91 was because Mr. Edgar refused to give anything but a quitclaim deed.

Judge Swayne, in his first statement, in which he refused to recuse himself, said he had purchased the land for a relative. He suppressed the fact that the relative was his wife. Later in the week he stated the relative was his wife, and that she was to pay for the land with money received from her father's estate.

Judge Swayne forced the trial contrary to the practice in his court. His practice was to go through the criminal business and then take up the civil list and assign the cases for trial on days convenient for court and counsel.

The case of Florida McGuire was not called until late Saturday afternoon upon the conclusion of the criminal business. Judge Swayne said it should be tried the next Monday. Counsel pleaded earnestly that it would be impossible to get ready for trial Monday. There were thirty or forty witnesses; none had been subpœnaed, relying upon the general practice of the court. Judge Swayne would not consent, but ordered the trial to proceed on Monday unless legal ground was laid for its continuance.

Under the circumstances is it very remarkable that the plaintiff's counsel hesitated to submit their case to the determination of Judge Swayne?

They agreed that Saturday night to discontinue the case of Florida McGuire in Judge Swayne's court and bring a suit against him in the State court to try the title to the land on the theory that he stood in the place of the owner, as he had, as they believed, purchased the land. The fact that the land was vacant and had never been in his possession was of no consequence, as the bringing of the suit would have been an admission on the part of the plaintiff that he, Judge Swayne, was in possession of the land. Of course Judge Swayne could have filed a disclaimer, which would have ended the case without the least harm to anybody

Judge Swayne assumed as a fact, without proof and against the allegations of Davis and Belden, that the determination to discontinue the McGuire suit was not reached Saturday night and that the suit against him was brought to force him out of the trial of that case.

Not the least of the bad conduct of which this judge has been guilty is in his efforts to influence this House by newspaper opinions and editorials. The mails have been loaded with communications addressed to Members containing articles prepared in the interest of Judge Swayne by someone very familiar with the testimony and very skillful in garbling and suppressing the damaging portions. I have very little respect for a trial by newspapers. It is a tribunal not recognized by law and not well calculated to arrive at the exact truth. When a great metropolitan daily gives up two-thirds of a page two days in succession and many editorial lucubrations to a case pending before the House it may be assumed that it is not done for the health or amusement of the publishers. When copies of such publications and others of like character are forced into the correspondence of Members in advance of a vote on articles of impeachment against a judge it may be assumed that the purpose of going to such great expense is to influence the result.

If a common criminal, charged with stealing a ham to keep himself from starvation, should endeavor by indirect methods to influence the grand jury having his case in charge he would go behind the bars. In my opinion a judge who does the same thing ought not to be exempt from punishment.

I do not imagine that any Member of this House has been or could be swerved from the path of duty by any such means, but that does not mitigate the guilt of those who make the attempt. This attempt is a direct insult to the intelligence and integrity of this House which is not out of harmony with many of the actions of Judge Swayne since his unfortunate elevation to the bench.

As to the venomous attack made upon the subcommittee by the gentleman from Ohio, and particularly upon me, all I have to say is I regret that a man who has so distinguished himself in the service of his country, on the field of battle as a soldier and in her legislative halls as a statesman, should find it necessary to turn the attention of the House from a consideration of the grave charges against Judge Swayne to an inquiry whether a letter introduced in evidence to support a charge which was abandoned was sufficiently proved to warrant its introduction as an instrument of evidence. The letter has no more to do with this discussion than a leaf from a Sanscrit Bible. But if anyone is curious about it, I have it here, with some others acknowledged by Boone to be his. The most casual inspection, as well as all the surrounding circumstances, demonstrates that he wrote it. His purpose was to hold the subcommittee up to ridicule and contempt, for what purpose I know not.

I regret that the distinguished gentleman from Ohio should have so far forgotten what is due to the dignity, honor, and intelligence of this House as to make a partisan appeal to its Members to vote against this impeachment, and to abuse the confidence of a friend by publishing in the RECORD a letter which will disgrace him forever.

He has again demonstrated the wisdom of the words uttered fifteen centuries before the Savior was born—

Great men are not always wise; neither do the aged understand judgment.

Now, let us see what this case actually is about, and where it now stands.

The people of the United States, especially those in the northern district of Florida, have some rights in this case which should not be overlooked by this House.

First. The charges made by the people against Charles Swayne are that he violated the law in that he did not reside in his district, as the law requires, from 1894 to 1900, a period of six years.

Second. That he falsely certified that his necessary expenses for travel and attendance while holding court outside of his district were $10 per diem when in fact they were far less.

Third. That he used the property of a bankrupt corporation, which was in his hands, claiming that he had the right to it.

Fourth. That he imposed an unlawful sentence of fine and imprisonment on Davis and Belden for the purpose of punishing them for a personal affront.

Fifth. That he unlawfully sentenced O'Neal for a contempt of court in a case in which, under the law, no contempt was committed.

The best defense that some of the ablest and most ingenious lawyers in this House could make has been made.

To the first charge of nonresidence it is that it was not complained of soon enough.

To the second charge, that other judges committed the same offense.

To the third charge, it was improper, but it occurred ten

years ago, and was not complained of by the parties in interest or the creditors of the railroad.

To the fourth, that Davis and Belden were guilty of a gross contempt and deserved punishment.

To the fifth, that O'Neal was also guilty of a grave offense and deserved punishment.

No answer is made to the charge that the punishment of the lawyers was unusually severe and imposed to gratify revenge.

I respectfully submit that none of these excuses should shield Judge Swayne from a trial before the Senate.

That he committed an impeachable offense in each case can not be denied truthfully by his defenders. But they seek to excuse his defects for the various reasons suggested.

Has the House any right to entertain excuses for a judge duly charged by the people when the evidence prima facie establishes unlawful acts?

Is it not the exclusive right of the constitutional triers to say whether Judge Swayne ought to be acquitted of the misdemeanors which he has confessedly committed?

The rights of the people of the United States are entitled to be considered. Not alone the people of the judicial district over which Judge Swayne presides, but the right of all the people.

When this House impeached Judge Swayne at the bar of the Senate, it was in the name of all the people of the United States. Hence all the people of the United States are, in a sense, parties in interest. They are, in truth, vitally interested, because the purity of the judicial branch of the Government in every judicial district is essential to the preservation of property, liberty, and life.

Given the fact that a judge has violated the law, is it not certain that the only tribunal before which he can or ought to interpose a defense is that which the law fixes for his trial? Will you deny the people of the United States, who have shown you that Judge Swayne has been guilty of high misdemeanors in office, the right to have him tried for the offense?

The people came to their Representatives; they made out a case against Judge Swayne. They found that he had violated the law; they demand that he be tried for it.

The issue is very plain. We can not avoid it by saying that Judge Swayne became unpopular through the election cases or that he is persecuted because he is a northern man and a Republican. If either fact were true, it would not justify him in the least degree for any of the misdemeanors charged against him. I am a partisan, and all who know me will testify that after the strictest sect of our party have I lived a Republican; but I believe I serve my party best when I serve my country best. I belong to a party that claims a large share, if not a monopoly, of the intelligence, the honesty, and the patriotism of the country. In the last election the slogan was from Maine to Georgia "honesty, decency, courage." We stood for a candidate who is never tired of sounding the praises of these old-fashioned virtues. He stood and stands for the highest ideals of American manhood. We said on every stump that he and his party were against embezzlement and embezzlers; against thieves and thievery, and against dishonesty in every form in high places and in low places. And the people believed us, and by a majority of more than 2,500,000 votes approved the doctrines of our party and the ideals of our candidate. Now we have one chance to make the claim good. The Representatives of that party, that candidate, and of those principles are asked to shield a judge from trial who has been guilty of grave misbehaviors that have smirched his good name and brought his great office into contempt. They are asked to overlook his offenses and grant him a pardon because he is a Republican; because he is persecuted by men who think he has wronged them; because some of the offenses were committed ten years ago; because other judges have sinned against the law.

This Republican House can let Charles Swayne go free without a trial, but if we do we should abandon the battle-cry "honesty, decency, courage;" and when we do that, let us beware lest, as Samson brought down the temple of Dagon upon the heads of his enemies, we bring down the temple of our party upon the heads of our friends.

Let us not imagine for a moment that lawyers' excuses for Judge Swayne's misdeeds will for a moment deceive the plain people, who believe that the law and the law's penalties were made for the high and the low alike.

Do not do him and the people of the United States a wrong by refusing him a trial and a chance to clear his good name. Send him to the Senate, and, for the honor and credit of the judiciary, I will join his friends in a prayer that God may send him a safe deliverance.

The assertion has been freely made by Members on the floor that they would never vote to impeach a northern judge on the complaint of southern Democrats. I thought the war was over. We have been boasting that the South was again marching to the music of the Union. We have pointed with pride to the fact that the blue and the gray pressed shoulder to shoulder up San Juan Hill, following the Stars and Stripes, and that they mingled their blood in defense of the flag.

We have boasted that Wheeler and Fitzhugh Lee, who won distinction under the stars and bars, have taken command under the Stars and Stripes. Is it all a sad mistake? Is it true that justice is to be denied the people of the northern district of Florida because they are Democrats and were Confederates? Is it true that the battles fought with bullets are, after forty years have passed away, always to be followed by campaigns of hate?

I stand here to say that it is a bitter, burning shame that an attempt has been deliberately made to inject political prejudice into this case and to thereby influence votes against the impeachment of Charles Swayne.

I paraphrase the words of the greatest of American statesmen and orators when he said "Men of New England, conquer your prejudices." I say, men of the North, conquer your prejudices.

I beseech you to stand by the claim we have made that we are an honest party, composed of honest men; that we hate dishonesty wherever found, and that we are willing to turn the rascals out. [Prolonged applause on the Democratic side.]

Mr. Speaker, I ask for a vote on the first three articles.

Mr. LITTLEFIELD. Mr. Speaker, I move that we do now lay upon the table the first three articles, which relate to the false certificates.

The SPEAKER. That motion takes precedence. The gentleman from Maine moves that the first three articles do lie upon the table.

Mr. GOLDFOGLE. Mr. Speaker, I ask that they be read.

The SPEAKER. Without objection, the first three articles will be read.

The Clerk read as follows:

ARTICLE 1. That the said Charles Swayne, at Waco, in the State of Texas, on the 20th day of April, 1897, being then and there a United States district judge in and for the northern district of Florida, did then and there, as said judge, make and present to R. M. Love, then and there being the United States marshal in and for the northern district of Texas, a false claim against the Government of the United States in the sum of $230, then and there knowing said claim to be false, and for the purpose of obtaining payment of said false claim, did then and there as said judge, make and use a certain false certificate then and there knowing said certificate to be false, said certificate being in the words and figures following:

UNITED STATES OF AMERICA, *Northern district of Texas, ss:*

I, Charles Swayne, district judge of the United States for the northern district of Florida, do hereby certify that I was directed to and held court at the city of Waco, in the northern district of Texas, twenty-three days, commencing on the 20th day of April, 1897; also, that the time engaged in holding said court, and in going to and returning from the same, was twenty-three days, and that my reasonable expenses for travel and attendance amounted to the sum of two hundred and thirty dollars and —— cents, which sum is justly due me for such attendance and travel.

CHAS. SWAYNE, *Judge.*

WACO, *May 15, 1897.*

Received of R. M. Love, United States marshal for the northern district of Texas, the sum of 230 dollars and no cents, in full payment of the above account.
$230.

CHAS. SWAYNE.

when in truth and in fact, as the said Charles Swayne then and there well knew, there was then and there justly due the said Swayne from the Government of the United States and from said United States marshal a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office.

ART. 2. That the said Charles Swayne, having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office as judge, as aforesaid, the said Charles Swayne was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed $10 per diem, to be paid upon his certificate by the United States marshal for the district in which the court was held, and was forbidden by law to receive compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel and attendance were $10 per diem while holding court at Tyler, Tex., twenty-four days, commencing December 3, 1900, and seven days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of John Grant, the United States marshal for the eastern district of Texas, the sum of $310, when the reasonable expenses incurred and paid by the said Charles Swayne for travel and attendance did not amount to the sum of $10 per diem.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

ART. 3. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid was entitled by law to be paid his reasonable expenses for travel and attendance when lawfully directed to hold court outside of the northern district of Florida, not to exceed $10 per diem, to be paid upon his certificate by

the United States marshal of the district in which the court was held, and was forbidden by law to receive any compensation for such services. Yet the said Charles Swayne, well knowing these provisions, falsely certified that his reasonable expenses for travel in going to and coming from and attendance were $10 per diem while holding court at Tyler, Tex., thirty-five days from January 12, 1903, and six days going to and returning from said Tyler, Tex., and received therefor from the Treasury of the United States, by the hand of A. J. Houston, the United States marshal for the eastern district of Texas, the sum of $410, when the reasonable expenses of the said Charles Swayne incurred and paid by him during said period were much less than said sum.

Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office.

Mr. PALMER. Mr. Speaker, on this motion to lay on the table I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 159, nays 166, answering "present" 6, not voting 54, as follows:

YEAS—159.

Acheson	Davidson	Jones, Wash.	Overstreet
Adams, Pa.	Davis, Minn.	Kennedy	Parker
Adams, Wis.	Dixon	Ketcham	Patterson, Pa.
Allen	Dovener	Kinkaid	Payne
Ames	Draper	Knapp	Porter
Babcock	Dresser	Knopf	Prince
Bartholdt,	Dunwell	Knowland	Reeder
Bates	Evans	Kyle	Rodenberg
Beidler	Foss	Lacey	Scott
Bell, Cal.	Foster, Vt.	Lafean	Shiras
Bingham	Fowler	Landis, Chas. B.	Sibley
Birdsall	French	Landis, Frederick	Slemp
Bishop	Fuller	Lawrence	Smith, Ill.
Bonynge	Gaines, W. Va.	Lilley	Smith, Samuel W.
Boutell	Gardner, Mich.	Littlefield	Smith, Wm. Alden
Bowersock	Gardner, N. J.	Longworth	Smith, N. Y.
Bradley	Gillet, N. Y.	Lorimer	Smith, Pa.
Brandegee	Gillett, Cal.	Loud	Snapp
Brick	Gillett, Mass.	Loudenslager	Southard
Brown, Pa.	Goebel	Lovering	Southwick
Brown, Wis.	Graff	McCall	Steenerson
Brownlow	Greene	McCleary, Minn.	Sterling
Buckman	Grosvenor	McCreary, Pa.	Stevens, Minn.
Burke	Hamilton	McLachlan	Sulloway
Burleigh	Haskins	McMorran	Tawney
Butler, Pa.	Hedge	Mahon	Thayer
Calderhead	Henry, Conn.	Mann	Thomas, Ohio
Campbell	Hepburn	Marsh	Tirrell
Capron	Hildebrant	Marshall	Townsend
Cassel	Hill, Conn.	Martin	Van Voorhis
Conner	Hinshaw	Miller	Volstead
Cooper, Pa.	Hitt	Minor	Vreeland
Cousins	Hogg	Mondell	Warner
Cromer	Howell, N. J.	Moon, Tenn.	Warnock
Crumpacker	Howell, Utah	Morgan	Watson
Currier	Huff	Mudd	Weems
Curtis	Hull	Murdock	Wood
Cushman	Humphrey, Wash.	Needham	Young
Dalzell	Jackson, Md.	Nevin	The Speaker
Daniels	Jackson, Ohio	Norris	

NAYS—166.

Adamson	Garner	Lind	Scudder
Aiken	Gibson	Lindsay	Shackleford
Baker	Gillespie	Little	Sheppard
Bankhead	Glass	Livernash	Sherley
Bartlett	Gooch	Livingston	Shober
Bassett	Goulden	Lloyd	Sims
Beall, Tex.	Granger	Lucking	Slayden
Bede	Gregg	McAndrews	Small
Benton	Griggs	McCarthy	Smith, Iowa
Bowers	Gudger	McLain	Smith, Ky.
Bowie	Hamlin	McNary	Smith, Tex.
Brantley	Hardwick	Macon	Snook
Breazeale	Harrison	Maddox	Spalding
Broussard	Haugen	Olmsted	Sparkman
Burleson	Hay	Otjen	Sperry
Byrd	Hearst	Padgett	Spight
Caldwell	Heflin	Page,	Stafford
Candler	Henry, Tex.	Palmer	Stephens, Tex.
Cassingham	Hill, Miss.	Patterson, N. C.	Sullivan, Mass.
Clark	Hitchcock	Patterson, Tenn.	Sulzer
Clayton	Holliday	Pearre	Swanson
Cochran, Mo.	Hopkins	Perkins	Talbott
Cooper, Wis.	Houston	Pierce	Taylor
Cowherd	Howard	Pinckney	Thomas, Iowa
Croft	Hughes, N. J.	Pou	Thomas, N. C.
Darragh	Humphreys, Miss.	Pujo	Trimble
Davey, La.	Hunt	Rainey	Vandiver
Davis, Fla.	James	Randell, Tex.	Van Duzer
Dayton	Jenkins	Ransdell, La.	Wade
De Armond	Johnson	Reid	Wallace
Denny	Jones, Va.	Rhea	Wanger
Dickerman	Kehoe	Richardson, Ala.	Webb
Dinsmore	Kitchin, Claude	Richardson, Tenn.	Webber
Dougherty	Kitchin, Wm. W.	Rider	Weisse
Driscoll	Kline	Rixey	Wiley, Ala.
Field	Kluttz	Robb	Williams, Ill.
Finley	Lamar, Fla.	Roberts	Williams, Miss.
Fitzgerald	Lamar, Mo.	Robinson, Ark.	Woodyard
Flood	Lamb	Robinson, Ind.	Wynn
Foster, Ill.	Lester	Rucker	Zenor
Gaines, Tenn.	Lever	Russell	
Garber	Lewis	Ryan	

ANSWERED "PRESENT"—6.

Cockran, N. Y.	Hughes, W. Va.	Wachter	Wilson, Ill.
Goldfogle	Powers, Me.		

NOT VOTING—54.

Alexander	Deemer	Keliher	Sherman
Badger	Douglas	Legare	Shull
Benny	Dwight	Littauer	Southall
Brooks	Emerich	McDermott	Stanley
Brundidge	Esch	Maynard	Sullivan, N. Y.
Burgess	Fitzpatrick	Meyer, La.	Tate
Burkett	Flack	Miers, Ind.	Underwood
Burnett	Fordney	Moon, Pa.	Wadsworth
Burton	Gardner, Mass.	Morrell	Wiley, N. J.
Butler, Mo.	Gilbert	Otis	Williamson
Castor	Griffith	Powers, Mass.	Wilson, N. Y.
Connell	Hemenway	Robertson, La.	Wright
Cooper, Tex.	Hermann	Ruppert	
Crowley	Hunter	Scarborough	

So the motion to lay on the table was rejected.

The Clerk announced the following pairs:

For session:

Mr. DEEMER with Mr. SHULL.

Mr. SHERMAN with Mr. RUPPERT.

Until further notice:

Mr. CASTOR with Mr. EMERICH.

Mr. ESCH with Mr. STANLEY.

Mr. MORRELL with Mr. UNDERWOOD.

Mr. CONNELL with Mr. BUTLER of Missouri.

Mr. BURKETT with Mr. ROBERTSON of Louisiana.

Mr. DWIGHT with Mr. KELIHER.

For the day:

Mr. DOUGLAS with Mr. MCDERMOTT.

Mr. WRIGHT with Mr. WILSON of New York.

Mr. WILLIAMSON with Mr. FITZPATRICK.

Mr. OTIS with Mr. BADGER.

Mr. HUNTER with Mr. SCARBOROUGH.

Mr. HERMAN with Mr. BENNY.

Mr. GARDNER of Massachusetts with Mr. BURNETT.

Mr. FORDNEY with Mr. GRIFFITH.

Mr. ALEXANDER with Mr. SULLIVAN of New York.

Mr. FLACK with Mr. TATE.

For Swayne case:

Mr. BROOKS with Mr. MIERS of Indiana.

Mr. HEMENWAY with Mr. COOPER of Texas.

Mr. HUGHES of West Virginia with Mr. GILBERT.

Mr. WILSON of Illinois with Mr. LEGARE.

Mr. WACHTER with Mr. WADSWORTH.

Mr. MOON of Pennsylvania with Mr. BRUNDIDGE.

Mr. LITTAUER with Mr. MEYER of Louisiana.

Mr. BURTON with Mr. BURGESS.

Mr. POWERS of Massachusetts with Mr. POWERS of Maine.

On this vote:

Mr. WILEY of New Jersey with Mr. MAYNARD.

Mr. POWERS of Maine. Mr. Speaker, before the vote is announced I desire to withdraw my vote and answer "present," because I understand that it is claimed that I should continue my pair with the gentleman from Massachusetts [Mr. POWERS] instead of having him paired with the gentleman from New York [Mr. SULLIVAN].

The SPEAKER. Call the gentleman's name.

The name of Mr. POWERS of Maine was called, and he voted "present."

The SPEAKER. Call my name.

The name of Mr. CANNON was called, and he voted "aye."

The result of the vote was then announced as above recorded.

Mr. PALMER. Mr. Speaker, I move the adoption of the first three articles, being those relating to the fee business.

The SPEAKER. The gentleman from Pennsylvania asks for a vote on the adoption of the first three articles.

Mr. LITTLEFIELD. Upon that question I ask for the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 165, nays 160, answered "present" 3, not voting 56, as follows:

YEAS—165.

Adamson	Clayton	Gaines, Tenn.	Henry, Tex.
Aiken	Cochran, Mo.	Garber	Hill, Miss.
Baker	Cooper, Wis.	Garner	Hitchcock
Bankhead	Cowherd	Gibson	Holliday
Bartlett	Croft	Gillespie	Hopkins
Bassett	Darragh	Glass	Houston
Beall, Tex.	Davey, La.	Goldfogle	Howard
Bede	Davis, Fla.	Gooch	Hughes, N. J.
Benton	Dayton	Goulden	Humphreys, Miss.
Bowers	De Armond	Granger	Hunt
Bowie	Denny	Gregg	James
Brantley	Dickerman	Griggs	Jenkins
Breazeale	Dinsmore	Gudger	Johnson
Broussard	Dougherty	Hamlin	Jones, Va.
Burleson	Driscoll	Hardwick	Kehoe
Byrd	Field	Harrison	Kitchin, Claude
Caldwell	Finley	Haugen	Kitchin, Wm. W.
Candler	Fitzgerald	Hay	Kline
Cassingham	Flood	Hearst	Kluttz
Clark	Foster, Ill.	Heflin	Lamar, Fla.

Lamar, Mo.	Palmer	Rucker	Sulzer
Lamb	Patterson, N. C.	Russell	Swanson
Lester	Patterson, Tenn.	Ryan	Talbott
Lever	Pearre	Scudder	Taylor
Lewis	Perkins	Shackleford	Thomas, Iowa
Lind	Pierce	Sheppard	Thomas, N. C.
Lindsay	Pinckney	Sherley	Trimble
Little	Pou	Shober	Vandiver
Livernash	Pujo	Sims	Van Duzer
Livingston	Rainey	Slayden	Wade
Lloyd	Randell, Tex.	Small	Wallace
Lucking	Ransdell, La.	Smith, Iowa	Wanger
McAndrews	Reid	Smith, Ky.	Webb
McCarthy	Rhea	Smith, Tex.	Weisse
McLain	Richardson, Ala.	Snook	Wiley, Ala.
McNary	Richardson, Tenn.	Spalding	Williams, Ill.
Macon	Rider	Sparkman	Williams, Miss.
Maddox	Rixey	Sperry	Wynn
Olmsted	Robb	Spight	Zenor
Otjen	Roberts	Stafford	
Padgett	Robinson, Ark.	Stephens, Tex.	
Page	Robinson, Ind.	Sullivan, Mass.	

NAYS—160.

Acheson	Davidson	Jones, Wash.	Overstreet
Adams, Pa.	Davis, Minn.	Kennedy	Parker
Adams, Wis.	Dixon	Ketcham	Patterson, Pa.
Allen	Dovener	Kinkaid	Payne
Ames	Draper	Knapp	Porter
Babcock	Dresser	Knopf	Prince
Bartholdt	Dunwell	Knowland	Reeder
Bates	Evans	Kyle	Rodenberg
Beidler	Foss	Lacey	Scott
Bell, Cal.	Foster, Vt.	Lafean	Shiras
Bingham	Fowler	Landis, Chas. B.	Sibley
Birdsall	French	Landis, Frederick	Slemp
Bishop	Fuller	Lawrence	Smith, Ill.
Bonynge	Gaines, W. Va.	Lilley	Smith, Samuel W.
Boutell	Gardner, Mich.	Littlefield	Smith, Wm. Alden
Bowersock	Gardner, N. J.	Longworth	Smith, N. Y.
Bradley	Gillet, N. Y.	Lorimer	Smith, Pa.
Brandegee	Gillett, Cal.	Loud	Snapp
Brick	Gillett, Mass.	Loudenslager	Southard
Brown, Pa.	Goebel	Lovering	Southwick
Brown, Wis.	Graff	McCall	Steenerson
Brownlow	Greene	McCleary, Minn.	Sterling
Buckman	Grosvenor	McCreary, Pa.	Stevens, Minn.
Burke	Hamilton	McLachlan	Sulloway
Burleigh	Haskins	McMorran	Tawney
Butler, Pa.	Hedge	Mahon	Thayer
Calderhead	Henry, Conn.	Mann	Thomas, Ohio
Campbell	Hepburn	Marsh	Tirrell
Capron	Hildebrant	Marshall	Townsend
Cassel	Hill, Conn.	Martin	Van Voorhis
Conner	Hinshaw	Miller	Volstead
Cooper, Pa.	Hitt	Minor	Vreeland
Cousins	Hogg	Mondell	Warner
Cromer	Howell, N. J.	Moon, Tenn.	Warnock
Crumpacker	Howell, Utah	Morgan	Watson
Currier	Huff	Mudd	Webber
Curtis	Hull	Murdock	Weems
Cushman	Humphrey, Wash.	Needham	Wood
Dalzell	Jackson, Md.	Nevin	Woodyard
Daniels	Jackson, Ohio	Norris	Young

ANSWERED "PRESENT"—3.

Cockran, N. Y.	Hughes, W. Va.	Wilson, Ill.

NOT VOTING—56.

Alexander	Deemer	Kelher	Scarborough
Badger	Douglas	Legare	Sherman
Benny	Dwight	Littauer	Shull
Brooks	Emerich	McDermott	Southall
Brundidge	Esch	Maynard	Stanley
Burgess	Fitzpatrick	Meyer, La.	Sullivan, N. Y.
Burkett	Flack	Miers, Ind.	Tate
Burnett	Fordney	Moon, Pa.	Underwood
Burton	Gardner, Mass.	Morrell	Wachter
Butler, Mo.	Gilbert	Otis	Wadsworth
Castor	Griffith	Powers, Me.	Wiley, N. J.
Connell	Hemenway	Powers, Mass.	Williamson
Cooper, Tex.	Hermann	Robertson, La.	Wilson, N. Y.
Crowley	Hunter	Ruppert	Wright

So the first three articles were adopted.

The result of the vote was then announced as above recorded.

Mr. PALMER. Mr. Speaker, I move the adoption of the fourth and fifth articles.

The SPEAKER. The gentleman from Pennsylvania moves the adoption of the fourth and fifth articles.

Mr. OLMSTED. Mr. Speaker, I shall ask for a division of those articles unless the gentleman will accept an amendment that I have to each of them.

Mr. PALMER. I decline to accept any amendment.

Mr. LITTLEFIELD. And upon this I call for the yeas and nays.

Mr. COCKRAN of New York. May I ask that the articles be read?

The SPEAKER. Without objection, the articles will be read.

The Clerk read as follows:

ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge, allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner, and under a claim of right, for the reason that the same was in the hands of a receiver appointed by him.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office.

ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge, as aforesaid, heretofore, to wit, A. D. 1893, did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

The car was supplied with some provisions by the said receiver, which were consumed by the said Swayne and his friends, and it was provided with a porter at the cost and expense of the railroad company, and also with transportation over connecting lines. The wages of said porter and the cost of said provisions were paid by the said receiver out of the funds of the Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne, acting as judge as aforesaid, allowed the credits claimed by the said receiver for and on account of the said expenditures as a part of the necessary expenses of operating the said railroad. The said Charles Swayne, judge as aforesaid, used the said property without making compensation to the owner under a claim of right, alleging that the same was in the hands of a receiver appointed by him and he, therefore, had a right to use the same.

Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office.

Mr. OLMSTED. I offer the following amendment to article 4.

The SPEAKER. The gentleman from Pennsylvania offers the following amendment to article 4, which the Clerk will report.

Mr. OLMSTED. It may save time to say that I want to offer a substantially similar amendment to article 5, and if it is agreeable to the gentleman in charge of the bill the two amendments might be considered together. I do not wish to take up any unnecessary time.

Mr. PALMER. I have no objection to considering the two amendments together.

The SPEAKER. The Clerk will report the first amendment.

The Clerk read as follows:

Amend article 4 by striking out the words "unlawfully appropriate to his own" and insert in place thereof the words "at the instance of the receiver." Also strike out the words "allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expenses of operating said road." Also strike out the words "to the owner and under a claim of right for the reason" and insert in place thereof the word "knowing." Also insert, after the word "him" and just before the word "wherefore," the following: "and that the expenses connected with the operation and transportation of said car and the cost of said provisions would be either specifically or in the general terms included among the expenditures of the receiver which he, as such judge, would be called upon to approve;" so that the article as amended will read as follows:

"ART. 4. That the said Charles Swayne having been duly appointed, confirmed, and commissioned as judge of the United States in and for the northern district of Florida, entered upon the duties of his office, and while in the exercise of his office of judge as aforesaid, heretofore, to wit, A. D. 1893, did use, at the instance of the receiver, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose of transporting himself, his family, and friends from Guyencourt, in the State of Delaware, to Jacksonville, Fla., the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors.

"The said car was supplied with provisions by the said receiver, which were consumed by said Swayne and his friends, and was provided with a conductor or porter at the cost and expense of said railroad company, and with transportation over connecting lines. The expenses of the trip were paid by the said receiver out of the funds of the said Jacksonville, Tampa and Key West Railroad Company. The said Charles Swayne, judge as aforesaid, used the said property without making compensation, knowing that the same was in the hands of a receiver appointed by him, and that the expenses connected with the operation and transportation of said car and the cost of said provisions would be either specifically or in general terms included among the expenditures of the receiver, which he, as such judge, would be called upon to approve.

"Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office."

The SPEAKER. The Chair understands the gentleman from Pennsylvania [Mr. OLMSTED] desires to offer an amendment to article 5 also, and to have the two amendments voted upon together.

Mr. OLMSTED. That is right.

Mr. PALMER. Are the two amendments identical?

The SPEAKER. The Chair does not know.

Mr. WILLIAMS of Mississippi. If they are not identical, they can not be voted on together.

Mr. OLMSTED. Oh, yes; one amendment relates to article 4 and the other to article 5. They apply to two different articles.

Mr. LITTLEFIELD. The purpose of the amendment is simply to change the form of the articles to carry out the facts according to the idea of the gentleman from Pennsylvania [Mr. OLMSTED].

Mr. WILLIAMS of Mississippi. Can the vote be taken on both amendments at the same time?

The SPEAKER. It can be done by unanimous consent; not otherwise.

Mr. COCKRAN of New York. The Clerk was in the act of reporting both specifications when the gentleman from Pennsylvania [Mr. OLMSTED] interposed his amendment. I do not want to detain the House by the unnecessary reading of the second of these two articles. If the gentleman from Pennsylvania will inform us that article 5 is practically the same charge as article 4, except that it refers to the California trip, it will then be unnecessary to read it.

Mr. OLMSTED. Mr. Speaker, I suggest that the amendment to the other article be read for the information of the House, and then we could ask unanimous consent to vote on the two amendments together afterwards. I now ask that the amendment be read.

Mr. COCKRAN of New York. Then let the specification be read also.

Mr. WILLIAMS of Mississippi. It should be read as proposed to be amended.

The SPEAKER. The Clerk will report the amendment to the next article, and if there be no objection, the Clerk will report article 5 as it would read if amended.

The Clerk read as follows:

Amend article 5 so that it will read as follows:

"ART. 5. That the said Charles Swayne was duly appointed, commissioned, and confirmed as judge of the United States in and for the northern district of Florida, and entered upon the duties of said office, and while in the exercise of his office of judge, as aforesaid, heretofore, to wit, A. D. 1893, did use, without making compensation to the owner, a certain railroad car belonging to the Jacksonville, Tampa and Key West Railroad Company for the purpose of transporting himself, his family, and friends from Jacksonville, Fla., to California, said railroad company being at the time in the possession of a receiver appointed by the said Charles Swayne, judge as aforesaid, on the petition of creditors.

"The car was provided with a porter at the cost and expense of the railroad company, and also with transportation over connecting lines. The wages of said porter were paid by the said receiver out of the funds of the Jacksonville, Tampa and Key West Railroad Company, and the said Charles Swayne knew that as judge he would be called upon to approve the accounts of said receiver, including the said expenditures.

"Whereupon the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of high misdemeanor in office."

The SPEAKER. If there be no objection, the question will be taken on agreeing to the two amendments.

Mr. OLMSTED. Mr. Speaker, a parliamentary inquiry. Is the amendment debatable at this time?

The SPEAKER. No.

Mr. OLMSTED. Then I ask unanimous consent for five minutes, to cover both amendments.

The SPEAKER. The gentleman asks unanimous consent to address the House for five minutes upon the two amendments. Is there objection?

Mr. PALMER. There is no objection, if we can have five minutes on this side.

Mr. OLMSTED. I will couple with it the request that there be five minutes also on that side.

The SPEAKER. And five minutes to those opposed to the amendment. Is there objection?

There was no objection.

Mr. OLMSTED. Mr. Speaker, I voted for the first three articles, and shall vote for some or all of the others, but I do not wish knowingly to do an injustice to Judge Swayne or to appear to charge him with something which does not appear to me to be at all substantiated by the evidence. The change which I propose is perhaps not very material, but it may be. He is charged in article 4 and again in article 5, as they now stand, with having appropriated to his own use, under a claim of right, the car of a certain railroad company and the provisions therein under the claim that, being in the hands of a receiver, he had a right to use them. Now, the facts are, according to the testimony of Judge Swayne himself and of Mr. Axtell, attorney for the receiver, that Judge Swayne did not appropriate the car, nor demand it, nor claim it as a right. It was the receiver's own suggestion. The receiver tendered Judge Swayne the car and the provisions therein, and Judge Swayne accepted them.

It was improper, in my judgment, for him to use them, the provisions particularly, as they would have to be paid for by the receiver out of the funds of the railroad company, and the expenditure the judge knew would have to be approved by him. But he did not take the car forcibly, nor under a claim of right. He did not demand it; he did not claim it. He simply accepted the courtesy when it was tendered him by the receiver.

He stands in the position of a celebrated author of whom the critic said, speaking of the book and the author: "He stands with one foot in the past century, and with the other hails the dawn of modern thought." [Laughter.] Judge Swayne stands with one foot back in that car in 1893 in the last decade of the past century, but the thought that he had a right to it, because it was in the hands of a receiver appointed by the court, was not in anybody's mind then. It is purely modern. It didn't even originate with Judge Swayne, but sprung from a leading question proposed by the chairman of the subcommittee, in which he said: "You see that it was the privilege of the court to use that car because the railroad was in the hands of a receiver?" And Judge Swayne said, "Yes; that is the reason why it was used;" and then he said that he had ten railroads in his hands in six years. He was asked: "You fancied you had a right to use the property of any railroad in the hands of the court whenever you pleased without rendering any compensation?" And then the judge hedged and said: "I would not say that."

So the first thought of having a right to use it because it was in the hands of a receiver occurred when the leading question was asked him, and he foolishly gave that silly excuse for acting improperly, and then, upon reflection, took it back. But I am not willing to say by my vote that he demanded and appropriated this car and provisions to his own use under a claim of right when, as a matter of fact, what he did was to improperly accept the courtesy of the receiver.

My amendments simply make these articles conform to the facts as disclosed by the record. I do not suppose anybody will go so far as to say that for a judge to ride in a private car is a high crime and misdemeanor which ought to make him the subject of impeachment. Ordinarily it is a question of taste and propriety to be determined by the judge himself according to the circumstances of the particular case. Here it was plainly improper. This car was provisioned for a trip of several days at the expense of the receiver. The judge knew, of course, that the expenditures made on behalf of himself and his family would, directly or indirectly, go into the receiver's accounts, which he, as judge, would be called upon to approve, and would thus come out of and diminish to that extent the estate of the bankrupt corporation. This no one will attempt to justify; but we ought not, in adopting articles of impeachment, include things which have not occurred. He never did appropriate the car and the provisions under a claim of right, as charged in articles 4 and 5, but he did improperly use them. They were freely tendered him by the receiver.

Mr. PALMER. Mr. Speaker, I do not agree to these amendments. The committee prepared these articles and gave a great deal of thought and attention to them, and they prepared them so that they would be supported by the evidence. There was no difference of opinion among the committee as to the form. This is an indictment, and if the gentleman from Pennsylvania thinks he knows more than the committee, if he thinks he knows more about the evidence and the argument, he has the right to have his amendments voted upon. We were of the opinion that the evidence supported the articles as they are drawn, and these amendments simply take the entrails out of the articles.

Mr. COCKRAN of New York. May I ask the gentleman a question?

Mr. PALMER. Certainly.

Mr. COCKRAN of New York. Is not the custody of the receiver the custody of the court, and can there be any distinction between taking property from the receiver and converting it to his own use? Is not the custody of the receiver his own custody?

Mr. PALMER. Certainly.

Mr. COCKRAN of New York. Then what is the point in making that distinction?

Mr. PALMER. Judge Swayne claims the right now, and he said he claimed it then, to take the car and use it because it was in the hands of the court. Now, this question was based on the written statement of Judge Swayne, which occupies 13 pages, in which he claimed that right; and in order to make it certain, I asked the questions for the very purpose of developing the idea whether he claimed it as a right or not. He claimed it then and he claims it now.